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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Preliminary report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by Mr. José Bengoa, in conformity with resolution 1994/40 of the Subcommission and decision 1995/105 of the Commission on Human Rights

Introduction

1. At its fifty-first session, held in 1995, the Commission on Human Rights, in decision 1995/105, approved the decision of the Subcommission to appoint a Special Rapporteur on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, at both national and international levels. The Special Rapporteur was requested to take into account "the preliminary and final reports of the Special Rapporteur of the Subcommission on human rights and extreme poverty and matters related to the realization of the right to development". The objective proposed to the Special Rapporteur is to determine "how most effectively to strengthen activities in this field". In resolution 1994/40 of the Subcommission, of which the Commission took note, emphasis was placed on the need to take into account the reports of the Special Rapporteurs, Mr. Danilo Türk and, in particular, Mr. Asbjørn Eide, submitted to the forty-sixth session. The Special Rapporteur was also requested "to pay particular attention to the impact of the enjoyment of human rights, and that of the right to education in particular". On the basis of this mandate, the Special Rapporteur has prepared the following preliminary report.

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I. FOCUS OF THE REPORT

2. Poverty and the unequal development of countries is currently a subject of concern to all. The statistics are unquestionably worrying. Millions and millions of people fail to enjoy even the generally accepted minimum standards of economic, social and cultural rights. Apart from denouncing the current situation, a report on this topic could prove extremely frustrating if it failed adequately to determine its aims and scope.

3. This preliminary report adopts the approach proposed by the Special Rapporteur, Mr. Danilo Türk, in his final report, in which he asked himself the following question: "Is the goal of human rights to set limits and tell the State what to do, or to free space for people to find solutions to their problems by themselves?" He then added: "New standards, the vast majority of which are totally unknown by the people they are allegedly designed to protect, ... are often ignored and also provide a useful 'smokescreen' ... . The setting of new standards without accompanying measures of monitoring and enforcement is no guarantee that the issues addressed will be adhered to and fulfilled". (E/CN.4/Sub.2/1992/16, paras. 189-190).

4. The study may possibly lead to the recommendation of a particular new norm relating to economic, social and cultural rights, linked with the specific aspects of the mandate, although this should be neither the focus of the study nor its main objective. In our view it is more important to help to create a "forum for discussion" which, besides drawing attention to the importance and validity of economic, social and cultural rights as fundamental human rights, may offer a large number of those concerned, Governments and civil society, an opportunity to submit proposals in order better to realize those rights. We are guided by the conviction that without a major international effort to improve the distribution of wealth, narrow the gap between rich countries and poor, offer the poor countries scope to develop, and permit the gradual and full realization of economic, social and cultural rights, world peace will be constantly under threat. An inescapable function of such organs as the Subcommission is to provide a forum for a continuing debate on such issues, and to become a source of proposals and constructive ideas for the United Nations system as a whole.

5. We endorse the proposals made in the Programme of Action adopted at the World Summit for Social Development in Copenhagen, and in particular the appeal made in chapter V, "Implementation and follow-up", to international organizations under which "all specialized agencies and related organizations of the United Nations system are invited to strengthen and adjust their activities, programmes and medium-term strategies, as appropriate, to take into account the follow-up to the Summit". (A/CONF.166/9, chap. I, resolution 1, annex, para. 96 (b)). It is thus appropriate to bring the mandate into line with the conclusions of the Summit for Social Development and to set the proposals within the context of that international event, and in particular of the designation of 1996 as International Year for the Eradication of Poverty. The Subcommission should play a key role in developing the ways and means requested and suggested by the Summit for Social Development to the international system to ensure more effective fulfilment of its goals.

II. CHALLENGES FACED BY THE STUDY

6. The broad challenge faced by a study of this kind is to answer the following questions as clearly as possible: By what means can it be ascertained when economic, social and cultural rights are observed or violated? And as a corollary of this, by what means can national and international responsibility be assigned for such violations? The Special Rapporteur is not unaware of the enormous difficulty entailed.

7. Economic, social and cultural rights were systematized, regulated and brought within the scope of international agreements within a specific historical context, which was essentially the result of the pressure and demands of the grass-roots social movements that had emerged at the close of the previous century, of the new States that had come into being both in the first and in the third world, and of a particular conception of the State which had taken shape during the first half of this century. The Versailles Treaty of Peace already made provision for the setting up of the International Labour Office, thereby recognizing labour rights. Between 1920 and 1946, international labour law, which is a substantial component of economic, social and cultural rights, was developed. In the immediate aftermath of the Second World War the Charter of the United Nations "which repeatedly refers to fundamental human rights (preamble, para. 2), was debated and prepared ... and it is clear from the immediate background to the text and from the context, that the reference to human rights encompassed the concept of economic, social and cultural rights". 1/ The Universal Declaration of 1948 "expressly takes up this wide-ranging, comprehensive concept of human rights". 2/ The Covenant was adopted on 16 December 1966 and came into force on 3 January 1976. The rights in question are clearly recent ones. As Professor Cees Flinterman has observed, "The process of 'codification' is still going on. ... It reflects the essential dynamism of the human rights tradition. New needs, issues, claims and developments urge both national communities and the international community to further strengthen the human rights framework". 3/ Obviously, the context from which economic, social and cultural rights emerged is changing, although this does not mean that they have ceased to be valid. However, the cogency of their formulation is either no longer attractive to contemporary political culture or dissolves into a series of well-intentioned statements disconnected from the practical mechanisms governing contemporary human coexistence. The permanent challenge facing the human rights bodies and in particular the Subcommission, is to link new needs and new problems to the effectiveness of those rights.

8. Just what is the modern, present-day view of economic, social and cultural rights? The challenge facing a study on the relationship between these rights and income distribution, with special emphasis on the subjects of development and poverty, is to restore their mobilizing force, their thought-provoking capacity, their rallying power. The traditional view, which commonly appears in the texts, is that the State is the sole custodian of economic, social and cultural rights. The international human rights instruments lay down the limits of State action and its obligations. Where civil and political rights are concerned, the obligation of the State is as follows:

> "Not to violate or impair them through an act of omission or commission, as the case may be, by a governmental or administrative organ or agent ... . On the other hand, where economic, social and cultural rights are concerned, the essential, albeit not exclusive obligation of the State is to take action; it must provide the material resources whereby the welfare, social, health, cultural and other such services can take the necessary steps to ensure their enjoyment. However, they do not presuppose a direct and immediate entitlement to demand concretely and specifically that the State provide the services that recognition of the right inherently requires. The State's obligation lies in the bounden duty to devote, within the limits of its economic and financial means, the resources necessary to ensure the realization of these rights. ... At the present stage in the development of international law, it is only possible to address such questions as the affirmation and enumeration of economic, social and cultural rights, the recognition, by treaty, of the obligation to promote and observe them and the assertion of the legal duty of States to devote their resources and economic and financial policies, in so far as their actual possibilities permit, to ensuring their realization. Accordingly, the international system of protection can only involve systematic, constant, and critical study and analysis, through appropriate organs and procedures, of the generic obligation of States to devote their economic and financial resources to this end." 4/

The abstract and general nature of these obligations transforms the norm into a "wish", i.e. a harmless statement of good intention. The present situation, as the author cited points out, is that the purposes and full realization of these rights are clearly not enforceable. The present challenge in this sphere is to surpass the stage of "studies and analyses", as their repetitiveness and legal ineffectiveness are frequently responsible for the public discredit of the international agencies supposedly responsible for protecting them. For this reason we suggest a change of emphasis, a contemporary view of these rights, in keeping with new trends in international politics and judicial practice, and in particular with the new concepts of the State and its function in society.

9. A modern view of the economic, social and cultural rights of individuals should have as its focal point the "right to opportunity". The Declaration of Philadelphia clearly expresses the right of individuals in this respect, in the following words:

> "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;".

The report by Mr. Eide is most explicit in this connection, and we fully endorse it. Quoting from the UNDP Human Development Report 1994, he notes that equity is "in opportunities, not in final achievements. Each individual is entitled to a just opportunity to make the best of his or her potential capabilities" (E/CN.4/Sub.2/1994/21, para. 63).

10. Without denying the responsibility of States for the realization of individual rights, the question obviously arises as to whether States are capable of ensuring the observance and full realization of economic, social and cultural rights. In most cases, the answer will be no. What then is the duty of States? It would appear that their primordial duty will be to provide the opportunities for this to come about. The right to opportunity thus becomes the focus of the theoretical and practical debate about the effective exercise of economic, social and cultural rights.

11. Consistent with this, we should make it clear that a violation of these rights occurs if barriers are raised to prevent individuals from enjoying equal opportunities. The right violated is the "right to opportunity". Such a violation may occur as a result of various factors: political, social, economic or cultural discrimination; the existence of objective barriers for particular sections of the population; and the existence of objective circumstances which, although they are susceptible to change, are not changed by a particular State, at the national level, or by several States together at the international level. Paul Hunt, a professor at the University of Waikato in New Zealand, accordingly notes that "protection of social rights is clearly important for all groups, but obviously it is particularly significant for marginal, disabled or underprivileged groups". 5/

12. The report by Mr. Türk drew attention to changes taking place in virtually all countries in the contemporary world regarding the concept of the State, and pointed out their consequences for the conceptualization of economic, social and cultural rights. Plainly, if these rights turn on the obligation of States "to satisfy the needs" of the population, "by providing the means necessary to do so", the building of a "welfare State" would be inherent in these rights. The reduction in the State's role, which is widespread in today's world, would give rise to huge difficulties in ensuring the effective exercise of these rights. This is why it is necessary to assert the State's duty to devote all possible efforts and resources, as is required by the Covenant, but in particular to offer equality of opportunity, by sweeping away the barriers that prevent particular sections of the population, or a group of countries, from fully enjoying their rights.

13. The consequence of such a conceptualization of economic, social and cultural rights is the possibility of their being enforced by positive means. What has commonly been measured has been access to the right, i.e. the existence of housing, health, etc.; what has to be measured at present is equality of opportunity, the "right to opportunity" and hence the degrees of equity of a society which, together with other indicators, can be measured through the conceptualization of income distribution. In the near future this and other social indicators should be able to be fully incorporated into all the decision-making processes of international agencies, and in particular the financial agencies. Just as macroeconomic indicators are studied when evaluating programmes on development, international cooperation and investment, and the related projects, exchanges and cooperation are made conditional upon certain changes to them, social indicators, and in particular income distribution, should be taken into account at the national and international levels.

III. THE INTERNATIONAL CONTEXT AND THE STUDY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

14. In his final report of July 1992, Mr. Türk foresaw that the "profound social and political changes" then taking place in the world "considerably enhance the importance of economic, social and cultural rights". And indeed, one of the many consequences of the end of the so-called "cold war" has been to highlight the globalization of international relations and existing inequalities. The issue of poverty has emerged as one of the key concerns to be addressed by the international community. Recently, at the World Summit for Social Development in Copenhagen, numerous speakers expressed their determination and commitment to combating extreme poverty and inequalities and to promoting social development.

15. The globalization of the world economy, the vast communications network, the universalization of patterns of consumption - in short, what has been described as life in the "global village" - connote interdependence. In the words of the philosopher Jürgen Habermas (1985): "Nowadays, all States, cultures and societies are so interconnected through the world market, communications, transport and technology that no one may affect ignorance of anyone else. We do not have a choice. If we do not want to be exposed to nuclear tribal warfare, we must agree on certain norms to ensure fair and harmonious relations. Human rights would be the solution ... Human rights are the fruit of a thought process that enables us to distance ourselves from our tradition and to learn how to understand others from their own viewpoint". He adds: "This is why we need norms for harmonious coexistence which ensure the integrity of each individual within the context of his or her own way of life". 6/

16. With the end of the cold war, the indivisibility of economic, social and cultural rights and civil and political rights has become self-evident. In his preliminary study, Mr. Türk raised the question of whether there existed a hierarchical ordering of the different types of human rights. Many are those who have maintained that inasmuch as economic, social and cultural rights are not immediately enforceable but can be realized only gradually and progressively, they are in a different category from civil and political rights. There are also many who considered the separation of the two Covenants to be a means of satisfying those international currents of opinion that gave priority to civil and political rights related to the principle of "freedom" over those that favoured equality and equity and emphasized economic rights. In recent years the international balance of opinion has tended to settle this paradox by reference to historical facts, pointing to the interdependence and indivisibility of both categories of rights. It is patently obvious that the exercise of civil and political rights is directly linked to that of economic, social and cultural rights, which are in turn linked to human rights as a whole. The Vienna Declaration brought the debate on this subject to a conclusive end, and its conclusions were reiterated in the Final Declaration of the World Summit for Social Development in Copenhagen.

17. The Declaration on the Right to Development, which was adopted by the General Assembly on 4 December 1986, clearly and fittingly expresses the new contemporary reality:

> "All human rights and fundamental freedoms are indivisible and interdependent and ..., in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and ..., accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms."

18. The human rights expert José Aylwin asserts the evolutionary nature of rights in the following terms:

> "Human rights are a set of principles or values which have gradually evolved throughout the history of mankind and become norms of both the domestic law of each country and international law, and are intended to regulate social relations so that they may be governed by an order that is based on freedom, equality, justice and peace." 7/

The emergence since the Second World War of human rights and of the Covenants as a distinct body of normative principles was in response to a specific historical situation that is now no more. There is no real sense to the debate on the establishment of a hierarchy between rights based on the principle of freedom and those based on the principle of equality. On the contrary - and this is the tenor of all the speeches and statements made at the World Summit for Social Development in Copenhagen - it is apparent that both of them are closely interdependent. If economic, social and cultural rights are not effectively realized, then civil and political rights "are reduced to mere formal categories. Conversely, if there are no real civil and political rights, if there is no effective freedom in the broadest sense of the word, economic, social and cultural rights in turn lack any real meaning". 8/ A consequence of the worldwide globalization that has taken place in the recent historical period has been to demonstrate the truth of the simultaneity and indivisibility of both categories of rights. The World Conference on Human Rights duly recognized this truth, thereby closing a lengthy debate.

The right to life, to the development of the human body and to individual dignity is the foundation of civil and political rights, and likewise of economic, social and cultural rights

19. The universality of the right to life has been demonstrated by the contemporary anthropological sciences. All the world's cultures have been guided by the imperative "thou shalt not kill", which represents the sine qua non for the survival of the species. Umberto Eco has said that one modern, and indeed contemporary, way of expressing the right to life is to uphold the right to physical integrity. Contemporary culture, in particular youth culture, is revolted by any act of violence against the human person, in particular against a person's body, his mental capacity, his capacity for emotional and intellectual development, his freedom of movement, and of physical, aesthetic and religious expression. Torture, for example, is an act

of aggression against the body in its physical and mental dimensions, which are indissociable. Racial discrimination is also a rejection of the body of the other, and consequently of his or her identity. In another legal sphere, air pollution is also an act of aggression against the body of the other, against his or her health, as is noise pollution, and the list goes on. All of these constitute acts of aggression against human life, against its physical corporality. The right of women to physical dignity is a topic that is nowadays of vital concern to individuals and to human rights organizations. All violations, from the most blatant involving physical attack, war, violence, to the least blatant, are acts of aggression against the right to live in dignity, to the inviolability of the human body, to the creation of the necessary space for all-round physical development.

20. Obviously, respect for life lies at the heart of civil and political rights philosophy. The originators of the democratic system sought in laws the means of protecting men from one another, so that they might set aside their violent instincts, come together, accept the will of the majority, reach agreement as rational beings and build a society in which life would not be threatened. The civil rights of individuals in relation to the State serve indeed as the system of protection whereby individuals need not fear the arbitrariness of authority and perceive their own lives as the fulfilment of the common good. The principle of life is the same principle that presides over economic, social and cultural rights. Moreover, it is frequently these rights that condition the corporality of life. If a person has no income and is unable to purchase food, his physical existence is jeopardized. If persons have neither a roof over their head, nor access to health, nor drinking water, their biological existence is jeopardized. The human body disappears. Without access to education, individuals are unable to communicate with one another, to understand the systems of signs, and are at a disadvantage for living in society, which is the minimal requisite for human existence. Without culture, identity, the right to a collective consciousness, to a religion, there can be no spiritual life. The human being, whose body and spirit are indissociably joined, withers away. The right to life is also the right to preserve one's bodily health, for the span of one's mortal existence. For men and women today health is a complex concept, involving all human rights. Herein lies the common principle.

21. This constituent principle of the right to life, in the sense of the possibility for the human body fully to realize itself, which is common to all humanity, is a basic right of individuals, merely by the fact of their birth as human beings. This is what Mr. Eide, quoting from the UNDP report, calls "the universalism of life claims":

> "Universalism of life claims is the common thread that binds the demands of human development today with the exigencies of development tomorrow, especially with the need for environmental preservation and regeneration for the future ...
>
> "But sustainability makes little sense if it means sustaining life opportunities that are miserable and indigent: the goal cannot be to sustain human deprivation. Nor should we deny the less privileged today the attention that we are willing to bestow on future generations ...

> "In such a conceptual framework, sustainability is, in a very broad sense, a matter of distributional equity - of sharing development between present and future generations. There would, however, be something distinctly odd if we were deeply concerned for the well-being of the future - as yet unborn - generations while ignoring the plight of the poor today. The ethic of universalism clearly demands both intragenerational equity and intergenerational equity (E/CN 4/Sub.2/1994/21, para. 63).

The universal principle of the right to life entails the need for intra- and intergenerational equity. This principle presides over human rights as a whole, both nationally and internationally.

22. Income distribution is the material and objective expression of relative levels of "intragenerational equity"; the management of natural resources and of the environment, the "right to sustainable development" is the expression of the level of "intergenerational equity" of societies; and thirdly, "international equity" expresses the fact that we live in an interconnected, globalized world in which we depend on one another and must therefore join together in solidarity.

Economic, social and cultural rights constitute the necessary minimum to guarantee the effective exercise of civil and political rights

23. Minimum economic, social and cultural rights are consequently those that make possible the material, social and educational conditions without which civil and political rights cannot be exercised. There is an intrinsic relationship between the enjoyment of political rights, democracy and the enjoyment of economic rights. The latter are the necessary but not sufficient condition for the full exercise of democracy.

24. For this reason the Türk report clearly points out the need to establish "the minimum core content of each economic, social or cultural right" (E/CN.4/Sub.2/1989/19, para. 31). The report quotes Philip Alston, who asserts: "There is an identifiable minimum core content of each right that cannot be diminished under the pretext of permitted 'reasonable differences'" (para. 30). This principle is plainly valid for all human rights without exception, as is demonstrated by the daily work of both the Subcommission and the Commission on Human Rights. Civil and political rights possess "minimum core contents" which are being defined with increasing precision as improvements are introduced into international treaties and conventions. No one, no country or State, could contend that any particular civil or political right is "perfectly" realized where it is concerned. No one could appropriate the intrinsic content of "democracy", for example. There will always be countries that are more democratic than others. Accordingly, as there exist in this field minimum requirements in respect of economic, social and cultural rights, a benchmark needs to be established in order to be able to apply them in real terms.

25. The "minimum core content" of economic, social and cultural rights is clearly determined by the needs that have to be fulfilled so that people can live with dignity. However, this minimum core content may be defined in terms of participation in civil and political life to which everyone has a right. Without the minimum economic conditions, people could not exercise their civil rights. This is increasingly borne out in the present age, not only in the poor countries of what is traditionally known as the third world but also in the developed countries. Extreme poverty, as is pointed out by the Türk report and the Despouy report, is in itself a denial of all rights and the ultimate embodiment of the indivisibility of human rights. The same can be said about all the specific rights, particularly the right to education and the other cultural rights. It is highly unlikely in today's world that someone who has not had access to education will be able to exercise his civil and political rights successfully. Economic, social and cultural rights have an objective existence in so far as they guarantee the social function of human beings, allow them to live in society and make for the exercise of civil and political rights.

The growing globalization of the economy and world society is giving rise to increasing integration which tends to give universal bearing to minimum requirements in respect of both economic, social and cultural rights and civil and political rights

26. A contemporary view of economic, social and cultural rights must clearly take into account the globalization of international trade, production, finance, communications, patterns of consumption and the aspirations of the great majority of the world population. As then inequalities are always relative, minimum requirements are historically determined. The case of education is undoubtedly instructive. For centuries, possibly in many countries, the inability to read and write did not necessarily mean poverty, marginality and absence of rights. This is evident in preliterate societies, but it was also true until not long ago in societies where writing was a usual form of expression. This is not the case today. The World Declaration on Education for All (UNESCO) and the New Delhi Declaration for a Holistic Vision of Education for All (World University Service) highlight the fact that in order to live and participate in the world of today it is necessary to have access to reading, writing and the main symbolic codes of the present age. Standards are higher than they used to be in this field. The right to education has taken the shape of minimum requirements, which are not the same as they were a few decades ago.

27. A similar point is made in the report of the Special Rapporteur Rajindar Sachar on the right to adequate housing. The key concept in the report is what can be considered "adequate" since, except for special situations, the persons considered have housing, but it is described as "inadequate". They are frequently considered to be simply without housing. Such is the well-known case of country people in the third world, who possess traditional dwellings made of flimsy materials, which in terms of modern standards are inadequate. The fact is that, if there were no global framework for comparison, such housing would be suitable for these country people. However, in the context of globalization, both observers and country people themselves come to find their housing inadequate.

28. Likewise, the globalization of the economy and world society is leading to changing standards in respect of income distribution. Equity, as a latter-day expression of the "decent life", has spread throughout the world together with the concept and practice of democracy. A democratic system with over-polarized income distribution is unworkable. It is also for this reason that, in the strictly economic sphere, there are increasing changes in what are regarded as minimum standards.

Income distribution both internationally and nationally is the principal indicator of social integration and of the fulfilment of minimum requirements in respect of economic, social and cultural rights, enabling human beings to live in society

29. What is the relationship between economic, social and cultural rights as described and income distribution? In a world characterized by increasing globalization, income distribution is one of the most important indicators of social integration or disintegration currently used for the purpose of comparative analysis. As is pointed out in the Eide report and has been recognized by the Subcommission, inequitable income distribution is at present becoming the main threat to world peace, political stability among nations and the maintenance of social life. Extreme inequality within a society and between nations always goes hand in hand with a denial of basic human rights.

30. It is obvious that societies have been in the past, are at present and will be in the future unequal. For this reason the concept of minimum core content is decisive for the study of these questions. The concept developed by Eide of "intolerable levels of income inequality" unquestionably possesses considerable explanatory value. They are deemed intolerable in the light not of an abstract moral code but of a set of objective and precise factors and indicators. What makes them intolerable is that they impede the social and political development of a society, or of a group of societies, under normal conditions. Extreme inequality proves intolerable for society and triggers all kinds of violence, war and crimes. In short, it impedes the normal development of social life.

31. A "fair income distribution", on the contrary, would be one that ensures the evolution of social life, makes "social integration" possible, encourages people to live in society, and leads to the full exercise of individual rights, i.e. of human rights. It is the practical application of the principle of what Habermas describes as the "good life", with the cultural specificities that characterize it.

32. Income distribution is then a graded indicator of social integration and of capacity to realise economic, social and cultural rights, within a system of limited resources, both nationally and internationally. One of the main objectives of the Special Rapporteur on this question in forthcoming reports should be to investigate this theoretico-methodological hypothesis, in other words, to determine these various degrees of "intolerableness".

IV. INCOME DISTRIBUTION, SCANT RESOURCES AND THE GRADUAL NATURE OF FULL ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

33. The applicability of economic, social and cultural rights is determined by their nature, which is relative. The subject of economic, social and cultural rights should not be trivialized, and so much so that any economic and social aspiration comes to be seen as a right. Clearly, at the present time, the well-to-do in the developed countries possess a huge variety of economic possibilities. It is natural to think that the majority of people aspire to the same standards of living. For all that, it cannot be said that these high standards of living are in themselves an economic right of each and every human being, and even less that they should be made into an enforceable right.

34. As was noted earlier, absolute minima are linked to the factors determining the degree of social integration of each particular society. A very poor but very tight-knit society will tend to ensure the economic, social and cultural rights of all its members and likewise fully guarantee their civil and political rights. The experience of many indigenous peoples in this regard has been extensively commented upon by present-day anthropologists. Conversely, a very rich but highly inegalitarian society will brutally flout individual rights and become a permanent theatre of conflict and violence. Unhappily, there are many examples that attest to this truth in our time.

35. Income distribution must therefore be two-pronged. Both prongs are clearly set out in article 2 of the International Covenant on Economic, Social and Cultural Rights. Under the Covenant, each State shall endeavour to ensure the realization of those rights "to the maximum of its available resources". This is the synchronic dimension of such rights. The second undertaking consists in "achieving progressively" the full realization of the rights in question. This is the diachronic dimension. Income distribution as an indicator of the realization of economic, social and cultural rights hinges on these two factors: the volume of resources available to each society and their deployment over a period of time. On the basis of this principle, explicitly referred to in the International Bill of Human Rights, the question of income distribution is not an abstract paradigm but becomes a historically determined objective. We are for this reason in agreement with the definition put forward in the report by Mr. Eide, who defines the term "in a neutral sense, as a measurement of the way in which income is distributed in a given society" (E/CN.4/Sub.2/1994/21, para. 17). Viewed from this angle, the concept of "income distribution" is an excellent means of measurement. The aim or desired outcome is equity, needs satisfaction and equality of opportunity.

36. We may wonder whether income distribution is an adequate indicator of the realization of the right to opportunity. Future reports should make an empirical study of this question, taking into account various factors, but it is without doubt a plausible hypothesis that the greater the differences in income distribution, the greater the differences in opportunity, so that there will be an impairment of the right to opportunity. We would in this case be characterizing a structural process of discrimination. Nelson Mandela, in his speech at the World Summit for Social Development, noted that poverty was "the new face of apartheid", that being born poor in a third world country was as

harsh a fate as being born a slave in earlier times, and indeed that poverty was the slavery of the modern world. We endorse this remark which may offer suitable guidance for a study on income distribution and the realization of economic, social and cultural rights. When all is said and done, income distribution is unquestionably an adequate indicator of the extent to which economic, social and cultural rights are realized. Income distribution is an expression of equity in respect of the material conditions of human existence.

V. THE RELATIONSHIP BETWEEN THE ENJOYMENT OF HUMAN RIGHTS IN GENERAL AND INCOME DISTRIBUTION AT INTERNATIONAL LEVEL

37. Income distribution at international level has been studied in various documents, produced both by the Subcommission and Commission and by the specialized agencies of the United Nations. The recent World Summit for Social Development expressed considerable concern about the existence of growing inequalities among countries. The main objective of Commitment 4, in particular, adopted in Copenhagen, is to achieve equity and social integration. "We commit ourselves to promoting social integration by fostering societies that are stable, safe and just and that are based on the promotion and protection of all human rights, as well as on non-discrimination, tolerance, respect for diversity, equality of opportunity, solidarity, security, and participation of all people, including disadvantaged and vulnerable groups and persons" (A/CONF.166/9, chap. I, resolution 1, annex, para. 29). This statement unquestionably constitutes an entire programme of action at both international and national levels.

38. The consequences for world peace of the unequal distribution of wealth are quite obvious. For this reason the common goals set by the Summit on Social Development should be taken up by human rights bodies. The developed countries' contribution of 0.7 per cent of GDP to development assistance is a goal to which all countries have solemnly committed themselves. The so-called 20/20 approach, consisting in collaboration on a shared basis between developed countries and underdeveloped countries in putting social plans and policies into practice, is another decisive initiative. This Special Rapporteur considers that the Subcommission is a good place to consider the steps taken to give effect to these aims, formally approved in Copenhagen. He suggests that the Subcommission pronounce on the appropriateness of addressing these matters so as to establish a "forum", as has been said, for follow-up, analysis and proposals, when the corresponding agenda item is discussed.

VI. WORK PLAN

39. In his report, Mr. Eide recommends that, "if a study is to be carried out, the larger question of income distribution should be broken up into appropriate components. The different contexts in which inequality of income can be observed should be addressed ... [since] differences in income often result from discrimination". He therefore recommends that a distinction be drawn between equality of opportunity between men and women, between members of different races and ethnic groups, and between migrant workers and nationals of the country concerned. In particular, he suggests that a study be made of disparity of income in rural areas, i.e. the rural poor and the high degree of vulnerability of today's urban poor. In future reports, the Special Rapporteur should therefore examine the various cases of violations of

the "right to opportunity", as defined above. This means analysing the various forms of economic, political, social and cultural discrimination that prevent particular groups of persons at national level from exercising their economic, social and cultural rights. The Special Rapporteur will request the Subcommission's authorization to ask Governments, intergovernmental bodies and non-governmental organizations to assist in arriving at a more precise definition of these problem areas.

40. The second concern of the study should be income distribution at international level. The study should analyse the various causes of the widening gap between rich and poor countries. It should accordingly examine the various forms of discrimination in the international sphere that prevent countries or certain areas in the world from having fair opportunities to achieve development.

41. Thirdly, the study should examine economic, social and cultural rights in accordance with the typology established by the Covenant. Many of these rights are regulated by particular provisions, and these will not necessarily be covered by the study. To start with, as regards income distribution and the right to work (art. 6 et seq. of the Covenant), radical changes are currently occurring throughout the world. Implementation of labour rights has been a key factor in the achievement of fairer income distribution in many societies. It is essential to establish empirically what the relationship is. Income distribution and health (art. 12 of the Covenant) is an area in which there exist regulations and standards established by the specialized agencies of the United Nations, and it should also be examined in the study.

42. Fourthly, the study should address the relationship between income distribution and education, in accordance with article 13 et seq. of the Covenant. This should be one of the most important aspects of the study. There is empirical evidence of a direct relationship between access to education and income distribution. In the context of equality of opportunity, exercise of the right to education is essential. Unequal income distribution often prevents large parts of the population from having access to education, and hence from exercising their rights. Then again, it is internationally proven that education is the main factor for ensuring a fairer distribution of income in society. It will also be necessary to take a look at technical and vocational training (art. 6, para. 2, of the Covenant) as a factor in equality of opportunity. The same applies to access to "technical and scientific knowledge" in respect of agriculture and food (art. 11, para. 2 (a)) and, in general, to "the benefits of scientific progress and its applications" (art. 15, para. 1 (b)) and "the development and the diffusion of science and culture" (art. 15, para. 2). Plainly, lack of access to current science and technology is a major factor of cultural discrimination in modern societies. The study should collect empirical evidence concerning the relationship between these cultural rights and income distribution, for which support and collaboration are requested from organs of the United Nations system, Governments and non-governmental organizations, particularly those specializing in education and culture.

43. Fifthly, the relationship between income distribution and extreme poverty will necessarily have to be an aspect covered by the study. It is currently being realized that extreme poverty is on the increase in various parts of the world, and this is going hand in hand with increasing cases of unfair distribution and concentrations of wealth. The study of this relationship would seem essential inasmuch as it is here that we find the highest degree of discrimination in modern society. The conclusions of the Copenhagen Summit for Social Development should be taken up and the follow-up to its resolutions at international and national levels alike should be examined.

44. The mandate of the Subcommission and Commission to the Special Rapporteur includes, in the sixth place, the search for means of determining how most effectively to strengthen activities in respect of the realization of these rights. This mandate should be discharged with due reference to the question of indicators of economic, social and cultural rights, raised by the Türk report and discussed in various United Nations bodies. It is no secret that this discussion has tended to become bogged down in the last few years. According to many of those spoken to on this subject, there is a lack of political will to develop such indicators. For others, the problem is a technical one. The points made earlier in this report show that the problem is not a technical one but a political one. Indicators that would analyse in relative and diachronic terms the realization of the right to development are absolutely necessary. Furthermore, advances in statistics make it possible to operate increasingly complex databases, as can be developed from recent reports from UNDP, WHO, UNESCO and other specialized agencies of the United Nations.

45. In the seventh place, the most effective way in which the system can contribute to improved realization of economic, social and cultural rights is by establishing a forum for the discussion of those rights. The Special Rapporteur requests the Subcommission to invite Governments, international bodies and non-governmental organizations to take an active part in debates under the agenda item relating to this issue and to devote to it just as much time as it requires and deserves.

46. Lastly, the Special Rapporteur requests the Subcommission to define the mandate in the light of the considerations set forth in this report. He suggests that emphasis be laid on the contribution that the study can make to the effective enjoyment and regulation of economic, social and cultural rights, in relation to the distribution of wealth at international and national level, poverty, particularly extreme poverty, and the right to development. Income distribution would consequently be viewed in a larger context as a prime and perhaps pre-eminent indicator for achieving equity, helping to overcome situations of poverty and ushering in equality of opportunity to which all persons have a right.

Notes

1/ Hector Gross Espiel, "Los derechos económicos, sociales y culturales, su reconocimiento, promoción y protección internacionales", Inter-American Commission on Human Rights, 1984.

2/ Ibid.

3/ J. Berting et al., Human rights in a pluralist world (Westport and London, Meckler, 1990, pp. 75-76.

4/ Gross Espiel, op. cit.

5/ Paul Hunt, Thesis, University of Waikato, New Zealand, 1955.

6/ Interview of Jürgen Habermas by Markus Schwering in the journal Humboldt, reproduced in Spanish in La Epoca, Santiago, Chile, May 1995, p. 15.

7/ Document issued by the Chilean Commission on Human Rights, Santiago, Chile, 1987.

8/ José Aylwin, op. cit.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Second interim report on human rights and extreme poverty prepared by the Special Rapporteur, Mr. Leandro Despouy

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Introduction

1. In 1992, in resolution 1992/11, the Commission on Human Rights requested the Sub-Commission to undertake a study of the question of human rights and extreme poverty and to entrust it to a Special Rapporteur whose mandate it defined. Also in 1992, in resolution 1992/27, the Sub-Commission decided to appoint Mr. Leandro Despouy as Special Rapporteur on the question. The Commission on Human Rights endorsed his appointment in its resolution 1993/13.

2. Resolution 1992/11 of the Commission on Human Rights stipulates that the study is to concern, in particular, "the following aspects:

(a) The effects of extreme poverty on the enjoyment and exercise of all human rights and fundamental freedoms of those experiencing it;

(b) The efforts of the poorest themselves to achieve the exercise of those rights and to participate fully in the development of the society in which they live;

(c) The conditions in which the poorest may effectively convey their experience and their thoughts and become partners in the realization of human rights;

(d) The means of ensuring a better understanding of the experience and thoughts of the poorest and of the persons working with them."

3. On 21 December 1993, the United Nations General Assembly adopted resolution 48/183 proclaiming 1996 International Year for the Eradication of Poverty, thus expressing the international community's concern about extreme poverty.

4. In resolution 1994/12, the Commission on Human Rights invited the Special Rapporteur to give attention to the interrelationship between the family, combating extreme poverty, and observance of the human rights of the poorest.

5. The Sub-Commission in resolution 1994/41 and the General Assembly in resolution 49/179 entitled "Human rights and extreme poverty" encouraged the Special Rapporteur to continue his work.

6. In resolution 1995/16 of 24 February 1995, the Commission on Human Rights took note with appreciation of the report of the seminar on extreme poverty and the denial of human rights (E/CN.4/1995/101, chap. IV), which was held from 12 to 14 October 1994 at United Nations Headquarters, and recommended it to the attention of the Special Rapporteur. In the same resolution, the Commission on Human Rights invited the Special Rapporteur to give attention to the Declaration and Programme of Action to be adopted by the World Summit for Social Development, which was held from 10 to 12 March 1995 in Copenhagen.

7. As indicated in previous reports and taking account of Commission on Human Rights resolution 1995/16, the Special Rapporteur anticipates basing his study on:

(a) The answers to questionnaires addressed to United Nations bodies and agencies, other intergovernmental organizations, States and non-governmental organizations;

(b) All reliable sources, including works by authoritative persons;

(c) The results of the consultations conducted in the field by the non-governmental organizations, to which he attributes great importance;

(d) The work of the seminar on extreme poverty and denial of human rights;

(e) The Declaration and Programme of Action adopted by the World Summit for Social Development on 12 March 1995 in Copenhagen, and its preparatory work.

8. Pursuant to the note verbale and letter sent out with the questionnaire, the Special Rapporteur received over 50 replies. The Special Rapporteur sees this as an important encouragement for the work he is undertaking. It also confirms that addressing the subject of extreme poverty from a human rights angle is a meaningful approach. Annex II of the present report contains a list of the replies received.

9. The Special Rapporteur wishes once more to thank all Governments, United Nations bodies, specialized agencies and international or non-governmental organizations which made a special effort in replying in great detail to the questionnaire on human rights and extreme poverty. It is the intention of the Special Rapporteur to give an in-depth analysis of the replies received in his final report.

10. After considering the matter further, the Special Rapporteur has decided to include the bibliography on extreme poverty and human rights, on which he has been working for some time, in his final report which is to be submitted to the forty-eighth session of the Sub-Commission in 1996.

11. The process of consultation in the field has led to a considerable amount of information which the Special Rapporteur has used in the present report. The Special Rapporteur has also taken careful note of the comments made by persons living in extreme poverty who took part in the seminar on extreme poverty and the denial of human rights and expects further contributions.

12. The seminar was held as planned from 12 to 14 October 1994 in New York. Mr. José Bengoa, Sub-Commission expert, was elected Chairman by acclamation. The seminar was attended by some 40 persons from all over the world. As working documents, the participants had all received the Special Rapporteur's preliminary and interim reports. The seminar was opened by a representative of the Centre for Human Rights, who read a message from the Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall.

13. The seminar brought together on an equal footing persons living in conditions of extreme poverty, persons working with them, experts on the issues of extreme poverty and human rights, representatives of United Nations bodies and specialized agencies and representatives of non-governmental

organizations. The objective of the seminar was to gain a better understanding of the living conditions and thoughts of individuals and families living in extreme poverty. It was an important feature of the direct consultation undertaken by the Special Rapporteur.

14. The seminar shed some extremely useful light on the connection between extreme poverty and human rights. It reached the following conclusions:

- Extreme poverty is a universal phenomenon;

- Extreme poverty constitutes an affront to human dignity and affects all human rights, which are interdependent and indivisible;

- There is a need for persons living in extreme poverty to participate in the elaboration of knowledge concerning the matter, regardless of the many difficulties such participation might entail;

- Persons living in extreme poverty make many efforts and perform acts of solidarity to cope with their situation, and these often pass unnoticed;

- It is often impossible for very poor persons to know and especially to exercise their human rights and therefore fully to assume the responsibilities normally shared by all members of society.

The seminar set out a number of conclusions and recommendations, which are contained in the report of the seminar (E/CN.4/1995/101). The Special Rapporteur will refer in more detail to the seminar's work in the relevant chapters of this report.

15. The seminar broke new ground in several ways. For the first time, an international seminar was organized in response to a direct appeal by individuals caught in the vicious circle of extreme poverty and was held with their participation. In that sense, it was an experience of partnership with the most deprived. It will be remembered that Father Joseph Wresinski, in his report entitled "Grande pauvreté et précarité économique et sociale", 1/ drafted in consultation with the persons concerned, had already noted that it was unacceptable to organize studies and meetings on people living in extreme poverty without giving them the opportunity to participate or to correct or contradict their findings. Every individual and every community, even within the United Nations system, was entitled to some degree of control over information circulating about them, whether or not it was used as a basis for policies. In that sense, the seminar expressed a desire for knowledge while realising a partnership right for the very poor. In view of the diversity of its participants, the seminar was the first in the United Nations to establish permanently the notion that extreme poverty constitutes a denial of all human rights.

16. The very poor families recalled on that occasion that for centuries they had been deprived of their history, since life experience only became history when it was told, disseminated and heard by others.

17. In resolution 1995/16, the Commission on Human Rights, emphasizing the importance of the reflections developed during the preparation of the Copenhagen World Summit for Social Development, invited the Special Rapporteur to give attention to the Declaration and Programme of Action to be adopted by the World Summit.

18. The Special Rapporteur attended the Summit, which was held from 6 to 12 March 1995 in Copenhagen, as well as a number of other events held on the same occasion.

19. The Copenhagen Summit recognized the significance of social development and human well-being for all. In the Declaration adopted at the Summit, the Heads of State and Government noted the worrying economic and social situation in the world. They also assumed 10 commitments to further social development, especially to eradicate poverty and to promote productive employment and social integration, through energetic action at national and international level. To this end, they adopted a Programme of Action setting out the policies and measures required to achieve the objectives of the Declaration (A/CONF.166/9, chap. I).

20. The thoughts on poverty and in particular on extreme poverty produced by the Summit are extremely useful and relevant for our study on human rights and extreme poverty. The Special Rapporteur would like to mention them in outline before referring to them in more detail in the relevant chapters of this report. The points are as follows:

(a) Poverty and extreme poverty exist in all countries;

(b) A distinction needs to be drawn between poverty and extreme poverty, and extreme poverty should be defined;

(c) Poverty is linked to isolation and exclusion;

(d) Greater wealth for some means greater poverty for others;

(e) Poverty is a multifactorial phenomenon, requiring actions in several areas and intersectoral policies;

(f) Poverty is an affront to human dignity. It prevents the full enjoyment of human rights and the possibility of assuming responsibilities;

(g) It is important and necessary that the poor should participate in all areas concerning society, especially in the preparation, implementation, follow-up and assessment of programmes concerning society as a whole or concerning them directly. Such participation can be either direct or through organizations representing the poor; the establishment of such associations should therefore be encouraged in order to draw on the efforts of the poor in programmes to combat poverty;

(h) The poor should be better informed of their rights and should be given the means to have them respected, and they should be provided with better information and communication facilities;

(i) The role of the family in the struggle against poverty should be recognized.

I. TERMINOLOGY, STATISTICS AND INDICATORS

A. Terminology

21. Several terms are used to identify extreme poverty. As was mentioned in the previous report, terms such as "absolute poverty", "extreme poverty", "critical poverty", "acute poverty", "indigence", "deep poverty" and "want" are used to convey roughly the same meaning.

22. Whatever the terminology used, all studies concerning poverty distinguish an extreme category within poverty. Thus the Copenhagen Declaration and Programme of Action distinguish between poverty or "general poverty" and "absolute poverty" or "extreme poverty". In United Nations human rights bodies, the most commonly adopted distinction is between poverty and extreme poverty. The Special Rapporteur, for his part, will therefore continue to use the term employed in the resolution establishing his mandate, i.e. extreme poverty.

23. For the Special Rapporteur, the only purpose of standardizing terminology is to make it easier to pinpoint a phenomenon in respect of which a wide variety of approaches has been adopted. Needless to say, this in no way excludes the need for a definition of extreme poverty from the human rights angle for the purposes of this study.

B. Statistics

24. Various sources estimate the number of persons living in poverty at more than one billion and, according to the Secretariat's Department of Economic and Social Development, of those persons the proportion living in extreme poverty amounts to about 60 per cent, or 20 per cent of the world population according to the Commission on Science and Technology for Development. 2/ This illustrates the enormous magnitude of the phenomenon.

25. In the case of extreme poverty, it is virtually impossible to obtain more detailed estimates. Indeed, even in the case of ordinary poverty, the statisticians themselves usually warn us against the unreliability of the statistics compiled.

26. Even in the industrialized countries possessing the technical and financial means needed to compile high-quality statistics, these are unable to take into account the poorest section of the population. Accordingly, in its final report dated 13 February 1991 on the Second European Programme to Combat Poverty, the Commission of the European Communities emphasized the shortcomings of the data on poverty, which entailed not only an underestimate of poverty but also a lack of any estimates of extreme poverty. At least three reasons can be identified for this.

27. The poorest persons are not reached during the compilation of statistics. For example, the above-mentioned report indicates that homeless persons are not covered, and nomads, repatriated immigrants, political refugees,

clandestine immigrants and inhabitants of shanty towns are inevitably underrepresented. Persons accommodated in socio-medical establishments of all types are likewise disregarded in the figures, even though they are probably poorer than the average. The report also notes that, when surveys are based on a representative sample of families in a country, the most disadvantaged persons are not usually questioned due to the difficulty of reaching them. In the developing countries, where many extremely poor persons do not even appear in the civil status registers, or where the means needed to compile statistics even on the relatively identifiable sections of the population are lacking, statistics, even when they exist, are far from complete or reliable.

28. The parameters used are inappropriate. The Department of Economic and Social Development warns against the unreliability of the series of statistics that it provides concerning the interrelationship between poverty and income distribution due to the poor quality and inadequacy of the data: "The inadequacy of the statistical evidence must be borne in mind. Even where official statistics about income distribution exist, illegal and unreported economic activities may make for a very different situation ... Poverty lines are inevitably somewhat arbitrary, and small changes might increase or reduce considerably the estimates of those living in poverty". 3/

29. The above-mentioned EEC report indicates that the figures obtained are based on expenditure. However, in poor households expenditure frequently exceeds income since those households are more likely to accumulate debts than savings. This is particularly true when income is precarious and varies from day to day.

30. There is a lack of interest and consideration in regard to the poorest section of the population. The fact that persons living in extreme poverty do not appear in the statistics is not attributable solely to technical difficulties; it reflects, above all, the lack of interest and consideration from which they suffer, as a result of which they do not yet enjoy the fundamental right to be included correctly in censuses.

31. The fact that the poorest persons are aware of this lack of consideration can have a direct impact on the findings of surveys to assess poverty. Hence, the above-mentioned EEC report further notes that the demeaning character of poverty induces persons facing major difficulties to refrain from designating themselves as poor in surveys in which they are requested to rank themselves on a scale ranging from wealth to poverty.

32. The Independent South Asian Commission on Poverty Alleviation, appointed by the South Asian Association for Regional Cooperation (SAARC) in 1991, concludes that conventional wisdom can hardly capture the multidimensional facts of poverty. The priorities of the poor and their perceptions have been totally ignored by that wisdom. But, the poor do have priorities, even a hierarchy of priorities; survival needs (based on stable subsistence); security needs (based on assets and rights including information needs so that they can cope with contingencies); social consciousness needs (based on levels of awareness); and self-respect needs (based on independence and choice, in other words, more freedom). 4/

33. A study of the International Institute for Labour Studies (IILS) puts it as follows: "Being recognized (and recognizing oneself) as poor is part of the misery of being poor". 5/

34. Societies have long been accustomed to the lack of precise knowledge concerning the poorest section of the population and would continue to disregard it if its growth were not currently disrupting their functioning. Noting this shortcoming and its pernicious consequences in regard to the implementation and effectiveness of measures to combat poverty, in its Programme of Action the Copenhagen Summit called upon States "to improve the reliability, validity, utility and public availability of statistical and other information on social development" (para. 16 (e)). More specifically, it called for "the development of methods to measure all forms of poverty, especially absolute poverty" (para. 25) and the complementary "elaboration, at the national level, of the measurements, criteria and indicators to determine the extent and distribution of absolute poverty" (para. 26 (d)).

C. Indicators

35. Referring in his previous report to the approach adopted by the World Bank, the United Nations Development Programme and the Economic Commission for Latin America and the Caribbean, the Special Rapporteur mentioned that, until recently, the indicators used to measure poverty were mainly indicators linked to income and the satisfaction of food needs. We find that same approach when reading the Report on the World Social Situation, 1993, which makes the following distinction between poor and extremely poor persons: "A person is considered poor if the total of his/her income earnings from the various assets he/she commands - such as land, capital and labour - do not allow that person a minimum nutritionally adequate diet and other essential non-food requirements ... Of the 1,100 million poor, some 60 per cent are considered to be extremely poor, barely able to meet their minimum nutritional needs". 6/

36. The current trend in regard to indicators seems to be based largely on the concept of basic needs in their broader sense, i.e. taking account of other factors such as health, education and participation.

37. Hence, in 1993, the Commission on Science and Technology for Development (CSTD) established a panel which set itself the task of examining the role of technology in the satisfaction of basic needs and discussing the manner in which fresh scientific approaches could help low-income populations in this regard. The panel defined basic needs as being the minimum elements needed to sustain life in all humans without exception, i.e. sufficient and appropriate nutrition, health care and water distribution and sanitation services, but also access to education and information so that individuals and groups can participate in productive activities and make use, in a rational manner, of the basic goods and services at their disposal.

38. Finally, the Commission noted that, given the current trend towards democratization, it would be more appropriate to link the question of basic needs to respect for human rights. It recommended that the question of technology for basic needs be addressed in a series of sessions in which it would participate, and also during a joint session of CSTD and the Commission on Human Rights.

39. The SAARC in its report, in an effort to identify the poor in quantifiable terms, has made use of a poverty line dividing the poor from the non-poor by putting a price on the minimum required levels of food, clothing, shelter and fuel. It questions, however, the use of the Head Count Ratio, which measures the (easily measurable) calorie-intake, in other terms only food-poverty. In the view of the Commission, such an approach does not indicate the various levels of poverty within the groups of poor and excludes important indicators such as on the need for clothing, housing and other minimum necessities.

40. According to the IILS study, poverty is almost always measured by asking whether a person's level of receipts (proxied by the flow of consumable commodities per person per year, rather than income) falls below some norm. It is questioned whether this approach is sufficient because well-being does not depend on receipts alone, but also on requirements and on conversion capacity from receipts into requirements. In addition, the study questions whether the norm would be the same for different people, times or conditions, when defining what level of receipts constitutes poverty. On the subject of expanding poverty indicators beyond food-consumption-income measures, the study postulates that the Human Development Index (developed by UNDP) is not a significant improvement on Morris's "physical quality of life index": in each case the items excluded (such as rights), the items included and the weighting are arbitrary. This coincides with one of the conclusions of the seminar on appropriate indicators to measure the achievements in the progressive realization of economic, social and cultural rights (Geneva, 25-29 January 1993) which expressed concern about the Human Development Index and the Human Freedom Index, which it saw as "arbitrary in the criteria upon which they are based and largely inconsistent with the indivisibility and interdependence of rights under human rights law" (A/CONF.157/PC/73, para. 174).

41. For its part, the Copenhagen Summit repeatedly stressed the fact that the satisfaction of basic human needs is a decisive factor for the alleviation of poverty and the achievement of real social development. Moreover, it emphasized that "these needs are closely interrelated and comprise nutrition, health, water and sanitation, education, employment, housing and participation in cultural and social life" (para. 35 (b)).

42. These were the main criteria used by the World Summit to determine extreme poverty, which it also called "absolute poverty" and characterized as being a state of "severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information", noting that it "depended not only on income but also on access to social services" (para. 19).

43. There is an evident need to develop appropriate and uniform indicators to measure the realization of economic, social and cultural rights. The seminar on appropriate indicators found that "human rights indicators should be based on respect for human dignity, equity, social justice, non-discrimination, freedom of choice and empowerment and should focus in particular on disadvantaged and vulnerable groups, victims of human rights violations as well as others excluded from human dignity (A/CONF.157/PC/73, para. 17). It concluded that when measuring progressive realization of economic, social and

cultural rights, a particular focus on the status of the poor and disadvantaged groups is required, best achieved through disaggregated data collected at national, regional and local levels (para. 160). It is regrettable that the seminar on indicators confined itself to noting the difficulty of developing reliable indicators in general and on poverty in particular, due to the failure to define minimum common denominators.

44. This requirement is all the more imperative since, as we have seen in the section of this report devoted to statistics, the Copenhagen Summit called for the "development of methods to measure all forms of poverty, especially absolute poverty" (para. 25) and the complementary "elaboration, at the national level, of the measurements, criteria and indicators to determine the extent and distribution of absolute poverty" (para. 26 (d)).

45. Finally, in the chapter devoted to the implementation and follow-up of the Summit's Programme of Action, the Governments undertook to develop quantitative and qualitative indicators of social development to assess the extent, distribution and characteristics of poverty as well as social exclusion (paras. 83 (c) and (h)).

46. The Special Rapporteur assigned to study the relationship between enjoyment of human rights, particularly economic, social and cultural rights, and income distribution at the national and international levels could make a very useful contribution in this field.

II. DEFINITION: A HUMAN RIGHTS APPROACH TO EXTREME POVERTY

47. The elaboration of a definition of extreme poverty is, in itself, highly complex but nevertheless useful in the context of the study. It has become indispensable following the request made to States by the Copenhagen Summit to "elaborate a precise definition of absolute poverty, preferably by 1996, the International Year for the Eradication of Poverty" (para. 26 (d)).

48. In order to define extreme poverty, the Special Rapporteur first of all attempted to determine its constituent and distinctive elements. In his preliminary report for 1993 (E/CN.4/Sub.2/1993/16), he expressed the view that such a definition should at least:

(a) Indicate the historical dimension of extreme poverty: it is not a new phenomenon but one that can be observed at all stages of human history;

(b) Show that the phenomenon of extreme poverty affects developed and developing countries alike;

(c) Show the links existing between poverty and exclusion;

(d) Make a distinction between poverty and extreme poverty, which is appreciable not only in terms of economic parameters but above all in relation to the impact on the enjoyment of all human rights;

(e) Show the harmful consequences for human rights and for the full exercise of responsibility of the persistence of the situation of insecurity in which persons living in extreme poverty find themselves for years and sometimes for generations. It usually is a truly vicious circle.

49. The Special Rapporteur presents below the data that make it possible to specify the constituent and distinctive elements of extreme poverty on the basis of various works and studies, etc. and particularly the Copenhagen Declaration and Programme of Action and the seminar on extreme poverty and the denial of human rights.

A. From the historical standpoint

50. The SAARC Commission report notes that poverty is a familiar concept and has existed in every society at all times. Poverty is a scourge that has indeed plagued all historical eras, as is evident to anyone who reads descriptions of the extremely difficult living conditions of workers at the time of the industrial revolution. Further back in time, in the Middle Ages, we see the appalling situation of the serfs and the villains or the "commoners" of whom Umberto Ecco speaks in his famous work The Name of the Rose. There is also a large bibliography showing the persistence of human poverty throughout history as well as the similarity of its consequences, regardless of the historical period, for its victims.

51. These writings offer a stark description of the harm and countless sufferings inflicted by life in extreme poverty. They shock our consciences and trouble our minds, particularly since, as already mentioned, an estimated 20 per cent of the world population is still living in similar conditions.

B. The universal dimension of the phenomenon of extreme poverty

52. In its resolutions 46/121 of 17 December 1991, 47/134 of 18 December 1992 and 49/179 of 23 December 1994 entitled "Human rights and extreme poverty", the General Assembly declared itself, in the same terms as the Commission on Human Rights, "deeply concerned that extreme poverty continues to spread in all countries of the world, regardless of their economic, social and cultural situation, and seriously affects the most vulnerable and disadvantaged individuals, families and groups, who are thus hindered in the exercise of their human rights and their fundamental freedoms".

53. A draft resolution tabled at the International Labour Conference in 1993 concerning the struggle against poverty, exclusion and marginalization mentions the extent of mass poverty and its increase in all parts of the world, recognizes that although these problems also exist in industrialized countries, they are particularly acute in developing countries and in countries undergoing transition and structural adjustment and expresses deep concern that both rural and urban sectors of society are becoming marginalized from the benefits of economic and social development because of their exclusion from regular employment, adequate social security coverage and other forms of social protection.

54. The participants in the seminar on extreme poverty and the denial of human rights, who came from all over the world, noted that "extreme poverty

exists everywhere in the world, in all regions and in developed as well as developing countries where it nevertheless has reached larger proportions" (E/CN.4/1995/101, para. 35) and found the phenomenon of extreme poverty to be universal (para. 81).

55. It is extremely noteworthy that the Heads of State and of Government, meeting at the Summit, stated in the Copenhagen Declaration on Social Development that "We are witnessing in countries throughout the world the expansion of prosperity for some, unfortunately accompanied by an expansion of unspeakable poverty for others" (para. 13) and further stated in the Programme of Action that "poverty occurs in all countries" (para. 19).

56. Finally, in its World Health Report 1995, entitled "Bridging the gaps", the World Health Organization also very clearly affirms the universality of the phenomenon and its alarming development: the number of the poor has increased notably not only in the developing world but also among disadvantaged groups and communities in the developed countries. WHO indicates that there is a gap not only between rich and poor but also between the poor and the poorest of all, not only between regions and countries but also between population groups in the same country. A disadvantaged subclass exists in every country and also in every town. In addition to disparities in national development levels, there is a phenomenon common to all countries: the increasing poverty of disadvantaged groups and communities, particularly in inner cities in the developed as well as the developing countries.

57. The expansion of the phenomenon in the industrialized countries should not be disregarded. A realization of this state of affairs was expressed, in particular, by the Council of Europe which spoke of a rapidly growing problem and noted that there was currently no shortage of indications showing that poverty and social exclusion were posing an increasing number of problems in all European countries. 7/

C. The relationship between poverty and exclusion

58. One of the most notable social consequences of poverty is the exclusion and, in some cases, the stigmatization of its victims. The fact is that although exclusion may sometimes entail poverty, poverty always entails exclusion. This fact was confirmed by several participants in the seminar on extreme poverty and the denial of human rights, who stressed that "people living in extreme poverty were often excluded from social life and suffered from an isolation that was sometimes total" (E/CN.4/1995/101, para. 29).

59. In view of this state of affairs, in 1989 the Council of Ministers of the EEC adopted the concept of social exclusion in order to tackle the question of poverty and the Council of Europe is currently undertaking a study on that question under the significant title of "Human Dignity and Social Exclusion".

60. For its part, the Copenhagen World Summit made three similar observations on the subject:

(a) "Poverty, unemployment and social disintegration too often result in isolation, marginalization and violence" (Declaration, para. 16);

(b) "Poverty has various manifestations ... social discrimination and exclusion" (Programme of Action, para. 19);

(c) "The poor do not participate in decision-making and in civil, social and cultural life" (Programme of Action, para. 19).

61. Aware also that social exclusion can lead to poverty for those who experience it, the Copenhagen Programme of Action requests States to design "social protection and support programmes ... to reintegrate people excluded from economic activity and to prevent the social isolation or stigmatization of those who need protection" (para. 38 (d)).

D. Extreme poverty and its impact on the enjoyment of all human rights

62. In his preliminary report, the Special Rapporteur had already mentioned the fact that he viewed his mandate as a fresh approach to the question of extreme poverty from the viewpoint of human rights, while pointing out that the problem was not so much one of the recognition of any specific right as the actual exercise or effective enjoyment of all human rights by the poorest.

1. Human dignity and human rights

63. That criterion tallies with the conclusion reached from the beginning by the General Assembly and by the Commission on Human Rights and the Sub-Commission, which identified extreme poverty and social exclusion as a violation of human dignity and an obstacle to the enjoyment of all human rights. The same views appear in the Declaration and Programme of Action adopted by the World Conference on Human Rights held in Vienna in June 1993. "The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its ... elimination must remain a high priority for the international community" (sect. I, para. 14).

64. Similarly, the Heads of State and Government at the Copenhagen Summit recognized that they shared a concept of social development founded on "human dignity", "human rights", etc. Considering poverty to be an affront to human dignity (Declaration, para. 23), they committed themselves to promoting full respect for human dignity (Commitment 5).

65. The significance of the Copenhagen Summit was the firmness with which it asserted that one of the main goals of social development was to offer everyone, men and women alike, and especially those who live in poverty, the possibility of exercising their rights and fulfilling their responsibilities, in order to contribute to the well-being of their families, their communities and humankind (Declaration, para. 9; Programme of Action, para. 72 (e)).

66. Moreover, the Heads of State and Government were aware that it was essential, in order to enable people to achieve social development, to ensure the realization of the rights set out in relevant international instruments and declarations, such as the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development, "in order to assist people living in poverty" (Commitment 1, para. (f)).

67. Lastly, in its conclusions, the seminar on extreme poverty and the denial of human rights stated that it was "clear that situations of extreme poverty affect all human rights: civil, cultural, economic, political and social, as well as the right to development, of which the human person is the central subject" (E/CN.4/1995/101, para. 83).

2. The indivisible and interdependent character of human rights

68. One of the greatest victories of humanity may well have been the consecration of human rights and especially the recognition of their indivisible and interdependent character. The phenomenon of extreme poverty provides a particularly revealing illustration of this indivisibility and of this interdependence.

69. The contributions which the Special Rapporteur was able to consult show that extreme poverty is a violation not only of economic and social rights, as may appear from a strictly economic viewpoint, but also of cultural, civil and political rights.

70. A number of participants in the seminar on extreme poverty and the denial of human rights, testifying about their daily lives, said that "without shelter, drinking water, electricity, adequate food, work, a minimum income or other resources one simply could not conceive of living a life in good health, having one's children go to school, participating in the local cultural life, ... participating in any political processes as citizens, or even having one's family life respected" (para. 53).

71. This coincides with the findings of the SAARC Commission, which sees human development as an important element of the poverty alleviation strategy. Special emphasis on food security, primary education, primary health care, shelter, the protection of poor children, defining and promoting the role and status of poor women in society, guaranteeing full employment and the right to work, and ensuring the full participation of all strata and groups of poor in social decision-making would expand the range of people's choices. These services should be approached holistically: the poor cannot separate work and health. If they do not eat, they fall sick and cannot work, which means they cannot generate the income to support their family, which in its turn is the beginning of a vicious circle. Of crucial importance is mobilizing the poor themselves with the support of non-governmental organizations.

72. The Copenhagen World Summit, after reaffirming the universal, indivisible and interdependent character of human rights and fundamental freedoms (para. 15 (b)), invited States to ensure their full application for all in order to eradicate absolute poverty and substantially reduce overall poverty (para. 83 (f)).

3. Extreme poverty prevents individuals from being able fully to assume their responsibilities

73. It is worth noting that in Copenhagen the Heads of State and Government undertook to ensure that social development would enable all persons, but especially those living in poverty, to exercise their rights and to discharge their responsibilities. This means there is a tangible connection between the

exercise of rights and the possibility of discharging responsibilities. The same viewpoint was expressed by the participants in the seminar on extreme poverty and the denial of human rights, who said that, despite all their efforts, it was often impossible for people living in extreme poverty, owing to a lack of means and opportunities, to assume the responsibilities to which they aspired.

74. The idea that the enjoyment of human rights enables individuals and families to assume their basic responsibilities finds further support in the views on social development expressed in Copenhagen, where it was recognized that no social integration was possible without the means of exercising one's rights and assuming one's responsibilities. 8/

E. Tendency for the phenomenon to perpetuate itself: the vicious circle of poverty

75. In his first interim report, the Special Rapporteur showed, on the basis of people's lives, that poverty is the combination of a whole series of adverse factors, including poor living conditions, insalubrious accommodation, unemployment, poor health, lack of education, marginalization, etc., amounting to a real horizontal vicious circle of poverty.

76. From the point of view of rights, a similar negative sequence may be observed. Section D.2 of this chapter, concerning the indivisible and interdependent character of human rights, showed to what extent the denial of one right could affect the exercise of other rights. In situations of extreme poverty, restoring one right in isolation is not sufficient to enable persons living in such conditions to regain the enjoyment of their other rights.

77. There is another equally perverse phenomenon, namely the transmission of extreme poverty from generation to generation. Monographs supplied to the Special Rapporteur by the Mouvement international ATD Quart Monde show how poverty is often transmitted over several generations, making it increasingly difficult for individuals to escape from want. This then produces a vertical vicious circle of poverty.

78. The participants in the Copenhagen Summit pinpointed the problem clearly when they stated that "children growing up in poverty are often permanently disadvantaged" (Programme of Action, para. 19). For this reason they proposed programmes targeted at children and young people living in poverty in order to "break the intergenerational cycle of poverty" (Programme of Action, para. 39 (f)).

III. THE EVIL OF POVERTY

A. Seriousness, scale and aggravation of the phenomenon of poverty

79. In the light of the views expressed in his previous report and the comments made in chapter I.B of this report, the Special Rapporteur would like to inform the Sub-Commission of recent findings in this area.

1. Seriousness of the phenomenon

80. We only need in this respect to refer to WHO's remarkable World Health Report 1995, "Bridging the gaps", which paints a striking picture of the scale and seriousness of extreme poverty in the world.

81. The world's most ruthless killer and the greatest cause of suffering on earth is listed in the latest edition of WHO's International Classification of Diseases, an A-to-Z of all ailments known to medical science, under the code Z 59.5. It stands for extreme poverty. In its report, WHO goes on to say: poverty is the main reason why babies are not vaccinated, clean water and sanitation are not provided, and curative drugs and other treatments are unavailable and why mothers die in childbirth. Poverty is the main cause of reduced life expectancy, of handicap and disability, and of starvation. Poverty is a major contributor to mental illness, stress, suicide, family disintegration and substance abuse.

82. And the report goes on: poverty wields its destructive influence at every stage of human life from the moment of conception to the grave. It conspires with the most deadly and painful diseases to bring a wretched existence to all who suffer from it. During the second half of the 1980s, the number of people in the world living in extreme poverty increased, and was estimated at over 1.1 billion in 1990 - more than one fifth of humanity.

83. Still according to WHO, poverty remains a major obstacle to health improvement, a situation which is likely to persist. It is perhaps the chief factor determining individual, family and community health. The most powerful image that emerges from the report is of widening gaps in health between the haves and the have-nots. Gaps not just between rich and poor, but between the poor and the poorest of all. Gaps not just between regions and countries, but between populations within those countries. There is a neglected underclass not just in every country, but virtually in every city. They are the street children, the unemployed, the elderly and the marginalized - including millions of women whose greatest disadvantage is their gender.

84. According to the Commission on Science and Technology for Development, this problem "is intimately connected with other worrisome facets of the human condition. One pertains to the fact that the majority of the world's very poor are either women, or children and the elderly who are ordinarily dependent on the care of women. This is a telling symptom of fissures along gender lines. Similarly, there is a disarticulation between humanity and nature that is leading to mounting ecological and environmental problems, some of which affect regions far beyond the countries where the problems originate. Once again, the question of basic needs is relevant since some of the most egregious ecological degradation is associated with regions characterized by extreme poverty" (E/CN.16/1995/2, para. 5).

85. One particular problem, to which poverty and rapid urbanization are major contributing factors, is street children. According to WHO, many of these children are below the age of consent, do not have parents or guardians, do not know a trusted adult who could accompany them for medical treatment and do not have the necessary documentation. Both boys and girls are highly vulnerable to drug abuse, prostitution and criminal exploitation, and in some

regions street children risk summary execution from death squads. As a result of these extremely painful and hopeless living conditions, 55 per cent of children in Rio de Janeiro in Brazil admitted that they had attempted to take their own lives. Recent estimates place the number of street children at as many as 100 million. There may be 40 million in Latin America, 25 million in Asia and 10 million in Africa, with about 25 million in other areas, including the developed world.

2. Scale and aggravation of the phenomenon

86. Where the worsening of the phenomenon of poverty in the world is concerned, the Secretariat's Department of Economic and Social Development reports that during the past decade, poverty increased in Africa and Latin America in both absolute and relative terms. In contrast, poverty declined in Asia. Much of that improvement occurred in China. In Latin America, the advance that the years of rapid growth had brought to poverty alleviation during the 1970s was lost in the 1980s. The region entered the 1980s with an estimated 35 per cent of households living in poverty, down from 40 per cent in 1970; it closed the decade with 37 per cent of households and 44 per cent of the total population in poverty.

87. Poverty increased mainly in urban areas. Reversing an earlier trend, in 1986 there were 94 million urban poor as against 76 million rural poor. With few exceptions, the share of households in poverty in rural areas was stable or decreased, despite sluggish economic growth. Yet, rural areas continued to host the vast majority of the extremely poor, whose incomes would not purchase the minimum basket of food.

88. According to the Report on the World Social Situation, 1993, poverty, which had been practically eliminated in the centrally planned economies during the period of rapid post-war industrialization, re-emerged in the late 1970s. It is estimated that half of the poor in developed countries - about 100 million - live in Eastern Europe and the former Soviet Union. Even though there are ambiguities in defining poverty levels, there is agreement that the number of people living in poverty rose in all countries in the region during the past two decades. The studies of the World Bank, the Luxembourg Income Studies and certain others are consistent in their conclusions.

89. During the 1980s, the social composition of groups in poverty changed substantially. Impoverishment among workers increased most. The living standards of residents in urban centres deteriorated more than those of farmers. Late in the 1980s, homeless people and beggars - extinct social groups under socialism - slowly became a part of the city landscape in many countries in Eastern Europe and in the former Soviet Union. The risk of falling into poverty was highest in the former Soviet Union for large families and therefore children, non-male-headed families and one-earner families.

90. In Europe, estimates made in some countries found between 3 and 5 per cent of the total population living in a situation of cumulative precariousness, according to a Council of Europe study on access to justice by the poorest in 1989.

B. The living conditions of people in extreme poverty

91. In his previous report, the Special Rapporteur drew attention to some of the more revealing aspects of the living conditions of people in extreme poverty. The seminar on extreme poverty and the denial of human rights, attended by individuals from all over the world, has now added more information. Since the report of the seminar is available (E/CN.4/1995/101), the Special Rapporteur will refer only to the facts and testimonies reported by seminar participants which appear to him to be the most instructive. He has also used the summaries of two monographs, one from Latin America and the other from Asia, as well as the description of a court case in Europe, because they give a broader and more accurate view of some of the aspects of life in extreme poverty.

1. The contribution of the seminar on extreme poverty and the denial of human rights (New York, 12-14 October 1994).

92. At the seminar, a number of participants testified about their daily lives, indicating that without shelter, drinking water, electricity, adequate food, work, a minimum income or other resources, one simply could not conceive of living a life in good health, having one's children go to school, participating in the local cultural life, including annual festivities or even birthday parties, participating in any political processes as citizens, or even having one's family life respected. Several participants referred to this problem as a "vicious circle of misery", which limits the access of the deprived to social services, health care, education and participation in political decisions.

93. This was illustrated by a participant from Western Europe, who said that in his experience all the aspects of life were interrelated and who described how difficult it was to find a way out when one is caught in extreme poverty. The very poor, without education, find it difficult to get work. Without resources, it was impossible to get decent housing or pay bills. Families find themselves without electricity or even water. It is difficult to eat properly. Children find it difficult to learn. They are treated badly at school, insulted and excluded from excursions because they cannot pay the costs. They are always at the bottom of the class. They are marked for life. The whole family is affected: there are misunderstandings, fights, break-ups. There are also repercussions for social life: families living in extreme poverty lose their freedom of movement; they hide, afraid to attend local celebrations and do not dare exercise their rights as citizens.

94. In another context, a participant from Asia also stressed the interdependence between the different aspects of life. He said that the lives of the very poor were marked by wandering: they go from one miserable situation to another, from slum to slum, beside garbage dumps, under bridges, in cemeteries or even in the streets. Every time, the very poor find themselves destitute, having to begin all over again. Living this way, it is extremely difficult to get health care or to educate children. Odd jobs or begging are necessary just to survive. Young girls are drawn into prostitution and children turn to drugs or become delinquents.

95. Several participants stressed that people living in extreme poverty were often excluded from social life and suffered from an isolation that was sometimes total. Such a person could be totally cut off from his or her family and social milieu. The isolation was very painful and it was said that the family was the last protection against total misery. A participant from Eastern Europe stressed this aspect. She described her work with children and young people living separated from their families because their condition of poverty had destroyed the families' integrity.

96. A participant from Africa spoke of the peoples from black Africa, who, according to him, had been bypassed by progress and development. Their already dramatic situation was becoming worse. He asked how one could talk of "democracy" and "human rights" when meeting basic human needs was a dream.

97. A participant from North America recounted how she had found herself unable to fulfil her family responsibilities in the following terms: "I was in a shelter with my children. I was so closely watched by the social services that I did not dare do anything. I did not dare scold my children when they were naughty. If they heard us shouting, someone from the child welfare office would come to see what was happening. One day my two-year old son was burnt when he spilled some coffee over himself. We were living in a very small room and he always wanted to touch everything. When the social workers saw that my son was burnt, they asked: did your mother do that to you? They asked my son that, who was only two years old! I was saved by the doctor, who said that it had been an accident, that he was coming to dress the wound and that I was not responsible. I was so afraid that my children would be taken away from me that I did not dare do anything. I could only really begin to carry out my responsibilities as a mother when I left the place and got a flat. My son was then eight years old."

98. Another participant living in a poor neighbourhood of a big city in Africa explained that the exercise of any responsibilities, including family responsibilities, was rendered almost impossible by extreme poverty. "The very poor always have to be thinking about their accommodation, the food they have to find for their children and for themselves. They keep wondering what they are going to do to ensure that their children can grow up properly. All this is like a cloak of worry which covers them and prevents them from exercising any responsibilities. I knew a man in the neighbourhood who was always thinking about all his worries: where was he going to find the money to pay the rent? What were his children doing? Were they not out stealing? He was always worried about being thrown out. For a long time, he looked for work, but generally did not find any. Then, in the end, he did not get up any more; he did not dare go out and would remain lying down. It is as if he was paralysed by the cloak of worries. I know several men like him; what sort of responsibilities would they ever be able to exercise?"

2. Monographs

99. The Special Rapporteur draws the attention of the Sub-Commission to two summaries of monographs taken from the study entitled "Famille du Quart Monde, acteurs de développement" 9/, together with material from a court case, all of which are annexed to this report as essential reading for an appreciation of the developments and analysis which follow (see annex II).

100. The monographs are the product of a methodology developed by the founder of International Movement ATD Fourth World for monitoring families living in extreme poverty over several generations. The studies are carried out by permanent voluntary workers of International Movement ATD Fourth World on the basis of numerous interviews of family members at various times in their lives, so as to give a more accurate and revealing picture of their history. The monograph approach has a number of advantages:

(a) It reveals the lasting nature of extreme poverty for very poor families and shows how it is passed on from generation to generation (vertical vicious circle of poverty);

(b) It shows clearly how one problem leads to another and their effects on human rights (horizontal vicious circle of poverty);

(c) It highlights the many efforts and acts of solidarity of persons living in extreme poverty to cope with their situation, efforts and actions which, though continually repeated, are often negated by the relentlessness of grinding poverty.

101. A more detailed study of the three situations shows that the same rights are impaired in different ways. For example:

(a) The right to housing. In all three cases, housing consists of squatter shanties either rented or hastily constructed, usually from scavenged materials. Furniture is often negligible, reduced to the strict minimum. Such dwellings are always temporary and afford no long-term, or even medium-term, security. Before finding or after losing housing, these families live wandering lives. All three families lost their accommodation at one time or another. Admittedly, the reasons differed: accidents in the case of Doña Matilde, legal eviction in the case of Poeng and arbitrary eviction in the case of the Weiss family. In the last two cases, however, the consequences have been the same, namely, further wandering;

(b) The right to education. The precarious housing situation of these families is detrimental to the children's education, preventing them from doing homework out of school. Their nomadic existence has direct implications as far as regular schooling is concerned. The children are also affected by the scorn and contempt in which the districts where they live are held, as is clear from the situation of Clara-Luz in the Latin American monograph. The necessity of helping at home, either by looking after younger brothers and sisters while the parents are at work, or by working to earn the money needed for the family's survival, also reduces the time available for education. Lastly, problems linked with the lack of identity papers also seem to be a reason for non-attendance at school, at least in the State schools, as in the case of the children of Poeng and Doña Matilde.

(c) The right to work and the right to an adequate standard of living. In all three cases, family resources are extremely limited. The parents' employment is often insecure, irregular, and obtained on a day-to-day basis or consists of small-scale independent artisanal activities. The work involved is also poorly paid and held in low esteem;

(d) The right to protection of the family. These monographs show the extent to which family ties are strained by the living conditions accompanying poverty. It is hard for couples to stay together, because of practical difficulties or the imprisonment or death of one of the spouses; the risk of children leaving the family is always very real;

(e) Civil and political rights. The very fact that these families, because of their wandering life or difficulty in finding accommodation, have no legal domicile illustrates the harmful consequences of extreme poverty on the exercise of political rights, as well as on fundamental civil rights. In fact, all these examples show that, in the final analysis, it is the right to live in dignity which is undermined;

(f) Efforts and acts of solidarity. The efforts which these families must make simply to send their children to school, find somewhere to live and preserve family ties which are constantly under threat are also made clear. The monographs thus show how difficult it is to escape from poverty, despite the acts of solidarity which they describe.

102. In conclusion, the above observations demonstrate that each form of insecurity (poor living, housing, working and health conditions) represents an impediment to the exercise of one or more human rights. But, underlying this, there is also the fact that this sector of the population is completely without resources to assert its rights and obtain justice. This last aspect is important enough to warrant separate consideration.

C. Denial of the "right to the law": difficulty of gaining access to justice

103. Persons living in extreme poverty are actually denied the "right to the law". As mentioned earlier, there are a number of obstacles barring access to justice for the poorest, including:

(a) Their indigent condition;

(b) The complexity of procedures, in addition to functional illiteracy and lack of education;

(c) Fear, not to say mistrust, stemming from their experience of the justice system:

> Either because they more often than not find themselves as defendants or accused, or because they see their petitions turned against them. "There is a strong possibility that they would be reproached with some unlawful aspect of everyday life quite unrelated to the grounds for the petition; the poorest have learned that, in seeking their due in a given matter, it is often preferable not to be in the wrong in some other respect"; 10/

(d) The slow pace of justice, although their petitions more often than not relate to very sensitive aspects of life (return of children, for example) which need to be dealt with rapidly;

(e) In addition to the above-mentioned problems, there is the fact that many countries do not allow them to be accompanied or represented by solidarity associations which could also bring criminal indemnification proceedings.

104. As a vulnerable group by virtue of the many uncertainties they face, persons living in extreme poverty should be the subjects of positive discrimination or special protection regarding their access to the law. Quite often, however, instead of affording them such special protection, the law contains provisions which increase and exacerbate their vulnerability. For example, some laws which favour the free movement of citizens restrict the free movement of individuals dependent on public assistance.

105. Another aspect which is assuming dramatic proportions is the impunity with which the most fundamental human rights of persons living in poverty and on the fringes of society are violated. We refer here, for example, to the many killings by death squads of persons known as "expendables", such as children and vagrants, in a number of Latin American countries. The Inter-American Commission on Human Rights has received a number of complaints of such incidents. We draw the attention of the Sub-Commission, and in particular of the Special Rapporteurs on impunity, to this new form of gross human rights violation which is perpetrated with complete impunity.

106. The Committee on the Rights of the Child has consistently expressed concern about the situation of children among the poorest sectors whose births are not registered and therefore do not legally exist. The members of the Committee emphasize the fact that their legal non-existence deprives these children of any social protection, even against attacks on their physical integrity or lives.

107. Clearly, persons living in extreme poverty are denied their "right to the law" either through impunity or through the inaccessibility of justice, whether it is a question of civil and political rights or of economic, social and cultural rights.

IV. WORK OF INTERNATIONAL INSTITUTIONS AND ORGANIZATIONS ON EXTREME POVERTY

108. In the light of the various activities of the international institutions and organizations referred to in his preceding report, the Special Rapporteur draws attention to the following new information which he has received in this connection.

Working Group on the Right to Development

109. The Working Group on the Right to Development was established by the Commission on Human Rights in 1993 with the mandate to identify the obstacles to the implementation and realization of the Declaration on the Right to Development and to recommend ways and means towards the realization of the right to development by all States. During its first session, the Working Group addressed the question of extreme poverty: "the situation all over the world was ... characterized by the deterioration in the living standards of

very broad strata of the population, increased illiteracy, malnutrition, unemployment and extreme poverty, a widening gap between rich and poor, and even further marginalization of the poorest" (E/CN.4/1994/21, para.27).

110. At its second session, the Working Group felt that "growing disparities between developed and developing countries and between population categories were reflected in rising unemployment, a deterioration in living standards, acceleration in migratory movements, growing marginalization and an upsurge in poverty everywhere" (E/CN.4/1995/11, para. 54). During the same session, the Working Group stated that "to empower the people and prevent the exclusion of vulnerable groups, education and training in civic responsibilities, human rights and fundamental freedoms and active participation had to be made more effective" (para. 75).

111. At its third session, the Working Group concluded that "the development process requires that individuals and groups - including the most vulnerable ones - are able to take an active part in decision-making and development processes and programmes in their own country" (E/CN.4/1995/27, para. 74).

World Health Organization

112. In its World Health Report 1995: Bridging the gaps, WHO established four priorities for international health action. Three of these four priorities relate to poverty:

(a) The first priority for the future is to ensure value for money by refocusing resources on those who need them most; using the available resources more efficiently; mobilizing additional resources, expertise and efforts and directing them to those countries (and population groups) where the targets have not been reached;

(b) The second priority is directly concerned with poverty reduction. As stated earlier, WHO considers extreme poverty to be the main cause of death and suffering in the world;

(c) The third priority is to promote a universal health policy based on the concept of equity. If the world community endorses the concept of equity in health, it will commit itself to achieving a better quality of life of all people and reducing differences in health status among countries and population groups.

113. Along these lines, the World Health Assembly, gathered at Geneva for its forty-eighth session, adopted resolution WHA48.16 on renewing the health for all strategy. Recognizing the need to give priority to those most seriously deprived in terms of health or health care, whether owing to poverty, marginalization or exclusion, the World Health Assembly has requested the Director-General to develop a new holistic global health policy based on the concepts of equity and solidarity.

International Labour Organization

114. As indicated by the Special Rapporteur in his first progress report, the ILO has made the anti-poverty struggle one of its three priorities for the future. In its resolution adopted on 21 June 1993, concerning social protection and the alleviation of unemployment and poverty and the social dimension of structural adjustment and transition to a market economy (resolution IV), the International Labour Conference, convinced that alleviation of poverty is closely linked to the need to promote full, freely chosen and productive employment and that the application of all relevant labour standards has an important contribution to make in countering unemployment and exclusion, and recognizing that the main responsibility for establishing a suitable legal framework for social protection lies with Governments, invited the Governing Body of the International Labour Office to instruct the Director General to ensure that the problems of, inter alia, poverty and social exclusion are given due attention in the preparation of the Second High-Level Meeting on Employment and Structural Adjustment.

Council of Europe

115. Efforts to understand social exclusion better and combat it more effectively. Most of the work of the Council of Europe in the social and other fields is concerned with ensuring respect for the dignity and integrity of the person by combating all forms of discrimination and marginalization.

116. The social and political upheavals of the past 10 years have prompted the Council to expand its anti-social exclusion activities. The symposium held in Strasbourg in 1991 on greater social justice in Europe and the challenge of marginalization and poverty drew attention to a rapidly growing problem. This symposium was followed by the adoption of Parliamentary Assembly Recommendation 1196 (1992) on extreme poverty and social exclusion: towards guaranteed minimum resource levels, the Charleroi Declaration of the Standing Conference of Local and Regional Authorities of Europe on eliminating poverty through citizenship (5-7 February 1992), the Nottingham Declaration of the Standing Conference of Local and Regional Authorities of Europe on social housing, the homeless and poorly housed in Europe (28-30 October 1992) and the Vienna Summit of 1993 at which Heads of State and Governments expressed concern about the worsening economic conditions threatening the cohesion of European societies by giving rise to forms of exclusion likely to promote social tension and manifestations of xenophobia.

117. It is in this context that the Council of Europe set up a project designed to find out more about the situations of individuals, families and groups suffering from social exclusion and poverty and the process leading to them by means of a people-oriented approach involving listening to individuals and encouraging them to express themselves, while taking account of the need for sound scientific analysis. This project is unique in that it will be carried out with the participation of the excluded themselves, of non-governmental organizations actively promoting their rights and of the wealth-generating sector. The project includes:

(a) A study of the main trends of poverty and social exclusion and an analysis of the processes involved in the light of rapid economic, political and social change;

(b) Description and analysis of the link between poverty and social exclusion on the one hand, and the denial of fundamental rights on the other, with a view to establishing a clear framework for social rights in order to combat poverty and social exclusion;

(c) Compiling a list of practical principles for action to combat poverty and social exclusion.

118. Efforts to enable persons living in circumstances of extreme poverty to have access to the law and justice. On 8 January 1993, the Committee of Ministers adopted Recommendation R (93) 1 on effective access to the law and justice for the very poor. To mark its concern about the situation of very poor persons, understood as those persons economically, socially and culturally deprived, marginalized or excluded, the Committee of Ministers, after noting its earlier resolutions and those of the United Nations on human rights and extreme poverty, reaffirmed that observance of human rights is linked with respect for human dignity, in particular with regard to the access of persons in circumstances of extreme poverty to the law and justice.

119. The Recommendation urges Governments of member States to facilitate the access of persons in circumstances of extreme poverty to the law ("the right to the law") through the adoption of practical measures to make the judiciary more aware of the problem, promote legal consultation services for very poor persons, etc. It also proposes facilitating access to the parajudicial resolution of conflicts and encourages non-governmental organizations and associations providing assistance to the very poor to participate in this endeavour.

Independent South Asian Commission on Poverty Alleviation

120. In their report, "Meeting the Challenge", the Commission pointed out that an essential prerequisite to any poverty eradication strategy would be human development, which guarantees the right of the poor to participate in decisions that affect their lives. In the opinion of the Commission, the right to food, to work and the right to all information services, as well as literacy, primary education, health, shelter and protection of children, are priorities for such a strategy. The Commission furthermore concluded that defining and promoting the role and status of women in society and ensuring the full participation of all strata and groups in society are necessary to make human development holistic. The ultimate objective of economic growth is to bring a higher level of human development within the reach of the poor and thus to expand their range of choices.

121. The Commission also found that building organizations of the poor is an essential prerequisite for poverty alleviation and that empowerment of the poor is the means to poverty eradication. Through the same process, poor women could effectively overcome their double burden of being poor and being women. Sensitive support mechanisms would be an important element in this social mobilization process. The State would provide the enabling policy

framework and resources and would devolve power to the poor. This would require a different pattern of development, which in turn would require an explicit political commitment of the leadership and the participation of the poor in development.

122. Concerning mobilization from within the poor population, this should be done from within a pro-poor perspective, which requires the State to be cognizant of the creativity of the poor and their sense of justice and humanity. After all, it is the poor who, although rich in everything except access to resources, are thwarted in their efforts to rise out of poverty by institutional and other obstacles.

123. Experience in the SAARC region shows that non-governmental organizations and organizations of the poor are much better placed for undertaking such programmes. Central government actions have been unable to put together the combination of flexibility, attention to detail, responsiveness to the needs and concerns of the poor and the ability to involve people directly in the management and operation of the programmes.

124. However, there are important functions for the State. Particular attention should be given to the definition and protection of the rights of the poor, women and other vulnerable groups. In addition, legislative reforms will be needed to enable non-governmental organizations to emerge and function independently, as well as for the poor to get organized.

V. WORK PLAN FOR THE FINAL REPORT

125. As the methodology of his previous reports was favourably received by the Sub-Commission, the Special Rapporteur intends to keep the same structure for the final report, namely:

Introduction;

Terminology, statistics, indicators;

Definition: a human rights approach to extreme poverty;

The evil of poverty;

Work of international institutions and organizations on extreme poverty;

Conclusions and recommendations.

Notes

1/ Journal Officiel de la République française, Avis et Rapport du Conseil économique et sociale, 1987 - No. 6, 28 February 1987.

2/ See document E/CN.16/1995/2.

3/ The United Nations Report on the World Social Situation, 1993, (United Nations publication, Sales No. F.93.IV.2, Chap. VII, p. 226) is devoted to a study of the interrelationship between income distribution and poverty.

4/ Independent South Asian Commission on Poverty Alleviation, "Meeting the Challenge", SAARC, November 1992.

5/ "Growing points in poverty research: Labour Issues". Discussion Paper by Michael Lipton (DP/66/1994), IILS, Geneva, 1994.

6/ United Nations, op. cit., p. 253.

7/ Council of Europe, Intergovernmental Programme of Activities for 1995, Activity II 1 b, Human Dignity and Social Exclusion, p. 77.

8/ One definition referring to this link between the exercise of rights and responsibilities was offered by Father Joseph Wresinski as author of the French Economic and Social Council report entitled "Grande pauvreté et précarité économique et sociale" (in Journal Officiel de la République Française - Avis et Rapport du C.E.S., p. 25).

> "Precarious living conditions entail the lack of one or more security factors which enable individuals and families to assume their basic responsibilities and to enjoy their fundamental rights. The resulting state of insecurity may be serious and irreversible.
>
> It tends to lead to extreme poverty whenever it affects several aspects of life, whenever it is prolonged in time and becomes persistent, or whenever it seriously jeopardizes the chances of regaining one's rights and reassuming one's responsibilities through one's own efforts in a foreseeable future."

9/ Study published by International Movement ATD Fourth World, Pierrelaye, France, 1993, and taken from "Est-ce ainsi que les familles vivent?", Editions Quart Monde, Paris 1994.

10/ "Pour une justice accessible à tous : le regard des familles en grande pauvreté sur les mécanismes d'aide légale et sur certaines initiatives locales." Council of Europe, Directorate of Human Rights, Strasbourg 1992, symbol H (92) 2.

Annex I

REPLIES TO NOTE VERBALE AND LETTER

The following replies were received in reply to the note verbale and letter of 31 January 1994:

Governments

Colombia, Ecuador, Finland, Iraq, Ireland, Jordan, Morocco, Nicaragua, Pakistan, Russian Federation, Yugoslavia (Serbia and Montenegro).

United Nations

Economic and Social Commission for Asia and the Pacific, Economic Commission for Latin America and the Caribbean, Committee on Economic, Social and Cultural Rights, Department for Policy Coordination and Sustainable Development, Department for Public Information, Division for Palestinian Rights, United Nations Centre for Human Settlements, United Nations Office at Vienna, United Nations Interregional Crime and Justice Research Institute, United Nations African Institute for the Prevention of Crime and the Treatment of Offenders, United Nations Development Programme, United Nations Conference on Trade and Development, United Nations Volunteers.

Specialized agencies

Food and Agriculture Organization of the United Nations, International Fund for Agricultural Development, International Maritime Organization, International Monetary Fund, International Telecommunication Union, United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization, World Bank.

Intergovernmental organizations

Council of Europe, Organization for Economic Cooperation and Development, International Criminal Police Organization, Inter-American Court of Human Rights, Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, League of Arab States.

Non-governmental organizations

Association Internationale des Charités, Caritas Internationalis, Baptist World Alliance, Emmaus International, Environment Liaison Centre International, International Council of Jewish women, International Federation

of Social Workers, International Federation Terre des Hommes, International Fellowship of Reconciliation, International Movement ATD Fourth World, Medical Women's International Association, Salvation Army, Servicio Justicia y Paz, Soroptomist International, World Association of Girl Guides and Scouts, World Federation of Methodist Women, World Federation for Mental Health, World Movement for Christian Workers, World Muslim Congress, World Union of Catholic Women's Organizations, Zonta International.

Other organizations

World Peace Day Association, Centre pour la justice et le droit international, The Galilee Society for Health, South Centre.

Annex II

SUMMARIES OF MONOGRAPHS AND COURT CASE

I. SUMMARY OF THE MONOGRAPH ON DOÑA MATILDA - LATIN AMERICA

At the age of 14, Matilda left her native village for the capital, accompanied by one of her aunts. She had had a hard life in the village in a poor family. Like her father, Matilda had never been able to go to school because she had started working very young. "I have been working ever since I was very small; I would fetch water for the cows, drive the pigs to pasture and help my father fertilize the fields or harvest the corn, water melons or sweet melons. We never stopped."

For her, the capital represented hopes for a better life. Matilda has fond memories of her early years in the capital: "Finally I knew what freedom was." She worked a part of each day but went to school every afternoon. "I never fell behind even one year. I really wanted to learn."

After three years, as she could no longer live with her aunt, she found herself alone. She earned a living from odd jobs (working in a small restaurant at the market or washing laundry). She learned to use her ingenuity in making ends meet. During this time Matilda was without accommodation and took shelter in one shack after another.

Clara-Luz, her first child, was born at this time. The baby fell ill and had to be hospitalized. Doña Matilda spent most of her time in the hospital. When Clara-Luz came out of the hospital, Doña Matilda's few possessions had been stolen. She was then taken in by a family for a few months until their son got married and took back the room where Doña Matilda had been living. "So I left, I didn't know where to go. For three nights I slept at the bus-stop by the market-place. I put down a plastic sheet for Clara-Luz to lie on. I didn't sleep, I was too ashamed of being there." Then a family which was itself very poor took Doña Matilda and her daughter in, in a shack near the railroad tracks. The area had become a refuge for the poorest families of the city. They were simply tolerated there but could be evicted at any moment. During this period a second child was born, Santiago. The fact that she was being housed by a family prevented Doña Matilda from living with the father, who died shortly after the birth.

Later, with her neighbour's help, Doña Matilda built her own shack by the railroad tracks. It was a shack measuring about three metres by three, made of wood and scrap metal. The dirt floor was not levelled. Two beds took up half the room. One was in good condition - Doña Matilda would sell it when she became destitute - and the other had two broken legs, replaced by a large rock. A small table and a rusty old U-shaped wood burner, topped by a grille, took up the other side of the room. There was neither water nor electricity. The railroad was a constant danger. One day, a huge machine jutting out on both sides of the train hit one of the beams of her shack, which collapsed. No one was hurt, but it was very frightening. Her neighbours helped Doña Matilda to rebuild her shack on the same site. "It's because we're poor that we have to live in places like this," she said.

Doña Matilda had three more children. She lived for several years with the father of the two youngest, Esteban. Esteban, who had also lived in poverty - living in the street from the age of nine until he relocated his father, with whom he began to live again - said: "This is the first time I have had a home." Then Esteban had an accident at work and could not work any more. However, he did a lot of small craftwork in the house. Doña Matilda then had a bit more spare time, so she was able to take part in the activities of community improvement groups, particularly a food aid programme for small children. "I love to help people, even if it means fighting," she said. Since his accident, Esteban had a tendency to drink and sometimes disappeared for days on end. He was arrested by the police during a brawl and sentenced to three years in prison for repeated offences. Doña Matilda, who had been told by a neighbour, went around to all the police stations in the city to find out where Esteban was being held. She went to visit him regularly.

During this time Doña Matilda enrolled her children in school. Clara-Luz and her brother went to a kindergarten for a while, until Doña Matilda was asked to show residence papers which she could not provide. Clara-Luz started school when she was eight. She went to a school where children who lived by the railroad tracks were pointed at. She was called "beggar", and "down-and-out". The start of the school year was a difficult time because even though school was free, money had to be found for school supplies and suitable clothes. Doña Matilda refused to send her children to school if they were not properly dressed. Clara-Luz could not do her homework at night because there was no electricity. Nor was there any table on which to do her homework. Clara-Luz also had to help her mother take care of her little brothers. Doña Matilda did not want her daughter to work, but at times of severe financial strain Clara-Luz would do odd jobs and bring home a little money. Doña Matilda ended up being able to enrol Clara-Luz in another school where the children who lived by the railroad tracks were better treated. For Santiago, schooling would be even more difficult. He spent a lot of time in the street. "This worries me," said Doña Matilda, "because I'm afraid he'll take the wrong path." Santiago was hanging out with children and young people in the neighbourhood who were sniffing glue.

II. SUMMARY OF THE MONOGRAPH ON POENG - SOUTH-EAST ASIA

Poeng is a 42-year-old woman whose body bears the marks of hardship. Originally from a port city, she now lives in the national capital. Of her childhood years she remembers the rhythms, demands and difficulties of daily life and the struggle for survival. Poeng has had two husbands. She had two children with the first, one of whom drowned. With the second she had four children.

At first, Poeng lived alone with the children from her second husband, aged 2 to 13 years, who none the less continued to see their father regularly. All five lived at the mercy of fortune or in temporary shelters in different parts of the city. In the course of these moves Poeng joined up again with her first husband, Chali, and the son they had had together. They all lived together for a while, but Chali was in ill health because of a serious head wound. Poeng took care of him until their ways parted.

Poeng took shelter under a bridge with her children, not far from a major monument. One day, a sign was posted on the wall: "It is forbidden to live here or to leave refuse". Festivities were planned in the city and a large number of tourists was expected. The few families who lived there were moved on and went their separate ways. Poeng again began drifting with her children. For a while she found shelter in the market-place beside the canal, and then in a covered area intended for cars. Poeng feared for her children's safety there and also did not want to stay because the rainy season was approaching. She then looked for somewhere to live with her children. She rented by the day, in a shanty town, a shack measuring two metres by four. It had a door but no window, and neither water nor electricity. It was built directly on the ground and not on piles, as was normally the case in the region. The owner came every day to collect the rent and drive out those who could not pay.

It was not common to find accommodation rented by the day. A person who worked alongside the evicted families said he had never known any place like it. Everywhere else, after all, shanty towns offered a minimum of housing security, at least for a week and most often for a month. When Poeng moved in with her four children, she had only a few possessions with her, a few dishes, some cooking utensils and clothing. She carried them all on a small cart. Despite the precariousness of her situation, Poeng regularly took in teenagers who had neither shelter nor food.

There was a palpable difference between the most dynamic families and the poorest families of the shanty town. The former maintained business ties and friendships with their place of origin and relations. This gave them the means to manage more easily in the city, by opening small shops or getting hired by firms. They would not be staying in the shanty towns for long. The poorest families, on the other hand, never had regular work nor did they have any relations who could do them a service or help them escape from poverty.

Even so, Poeng met up again with families who had lived in the street with her and with whom she had sympathized. The Buddhist monks kept in touch with Poeng's family, as with other families who had been relegated to the fringes of society. They tried to provide them with some of the services they had always performed for the poor. They offered to share the food which had been given to them with the families and helped them to take care of themselves or to teach the children when they were no longer able to attend public school. Poeng's children went to the monks' school. In that country neither property nor persons would be legally recognized unless they had an official address. Since Poeng's dwelling had been built as part of a squatter settlement, it could not be considered legal domicile and hence she could not obtain the residence certificate which would have enabled her children to go to the public school.

However, Poeng managed to make ends meet and feed her family. She did laborious and poorly paid work. Some days, while her 13-year-old daughter took care of the younger children, Poeng and her 10-year-old son, Pyra, would go and salvage printing paper to resell. On other days, when merchants gave them peppers to tail, all the children stayed with Poeng. The work burnt their fingers, but the elder children helped their mother fill the 50-kilo sack in one day. Some days, the children had to find their own food.

Sometimes Pyra went begging, which was an offence in that country. One evening he was arrested by the police and sent to a juvenile reform home. Poeng went to visit him regularly. She could not get him out because she did not have a residence certificate. It took all the help of the other residents of the shanty town for Poeng to get herself and her children listed on the residence certificate of her mother, who was herself listed on that of a friend. Only then could Pyra return to his family.

At the time of writing, Poeng has discovered that a red figure has been drawn on her house. A road is to be built on the site. For Poeng and her children, this means that their life of wandering is to begin again.

III. COURT CASE, THE WEISS CASE - FRANCE

The following is a retranscription of part of the testimony given by Maître Nicolas Jacob, a Paris Lawyer, before the French Economic and Social Council on 18 February 1986 and reproduced in the report by Father Joseph Wresinski entitled "Grande pauvreté et précarité économique et social".

According to his testimony, in the early 1960s, the Weiss family were living at the end of a farm road giving access to the fields of two landowners, about 800 metres north of a village.

Their living arrangements consisted of a large shack made of planks and a caravan without wheels. Mr. Weiss was a basket maker by trade. Mr. and Mrs. Weiss had had 10 children between 1950 and 1965, 6 of whom were still living with them at the time of the events.

For nearly 15 years, the family's presence was tolerated by the people in the neighbourhood, until the day when two of the children were accused of pilfering. That was the signal for hostilities and threats from some of the local people who, accompanied by policemen, besieged the camp on 13 January 1974. The terrorized family left the site in haste, taking with them some cooking utensils and clothes piled up in an old baby carriage. The very next day, the village mayor had their domestic animals killed, the lodgings burnt down and the site razed by bulldozer.

For three years, the family was forced to drift, being moved on from one area to the next, tolerated for a few days and then threatened with eviction or indeed sent packing without further ado.

The family first took shelter in the woods, under a makeshift tent. Then it was given the use of a caravan which had to be moved every 48 hours. It was not until May 1977 that the family was finally able to move into a gatekeeper's house and recover a fixed domicile.

None the less, it took a judgement by the Court of Cassation on 26 March 1985 for the guilt of the mayor, charged with the "destruction of movable and immovable property belonging to others", to be finally recognized and damages paid to the family. The procedure had taken 10 years and had been marked by several judgements by the Court of Cassation, the Colmar Court, the Court of Appeals of Metz and the Criminal Court of Metz.

Maître Jacob stressed the courage of the Colmar Indictment Division for having agreed, unlike other courts, to criminal indemnification proceedings being brought by a poor people's aid association, which was thus authorized to defend their rights. This very poor family was not able to rely for its defence on the Attorney-General, who may at his discretion take action on a complaint or discontinue the proceedings. Poverty does not carry an entitlement to a particular form of defence, as is the case for victims of war crimes, battered children, consumers and even animals. In this case, the Society for the Protection of Animals was in a better position to accuse the mayor of killing the cats and dogs than the poor people's aid association was initially to lodge a complaint on the family's behalf. The Colmar Indictment Division straightened out this abnormal situation. The mayor's plea, in his final appeal, that he had set fire to the abandoned encampment for reasons of health was dismissed.

Maître Jacob said that the Weiss family, which no commune had been willing to take in, had been condemned by the local authorities to a life of wandering. However, each person's position in respect of his or her rights and obligations is determined in part by domicile. This concerns inclusion in electoral rolls, the communication of administrative and judicial decisions; determining the competent court in cases of litigation, and requests for social or medical assistance. Without domicile, what social life or occupational activity is possible?

Such families are all the more likely to be victims, as Maître Jacob noted, because they do not have the means to lodge a complaint, nor would the idea even occur to them. This family viewed the authorities as extremely dangerous people, since they had all the power, including the power to take their children from them. That indeed was the reason why it had to be made possible for an association to bring criminal indemnification proceedings.

This court case shows among other things the usefulness of the law adopted in France in July 1990, following the decision taken by the Colmar Indictment Division, which allowed associations for the defence of the poor to claim damages in criminal proceedings before the courts.

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Sub-Commission on Prevention of
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Forty-seventh session
Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Report of the sessional working group on the administration of justice and the question of compensation

Chairman-Rapporteur: Mr. Louis Joinet

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Introduction

1. At its 2nd meeting, on 1 August 1995, the Sub-Commission decided, without a vote, to establish a sessional working group on the administration of justice and the question of compensation. The existing regional groups within the Sub-Commission nominated the following experts as members of the working group, and they were duly appointed on 1 August 1995: Mr. Stanislav Chernichenko (Eastern Europe), Ms. Clemencia Forero Ucros (Latin America), Ms. Lucy Gwanmesia (Africa), Mr. Louis Joinet (Western European and other States) and Mr. Zhong Shukong (Asia).

2. The working group held three meetings, on 2, 9 and 10 August 1995.

3. A representative of the Centre for Human Rights opened the session of the working group on behalf of the High Commissioner for Human Rights and the Assistant Secretary-General for Human Rights.

4. At the proposal of Mr. Chernichenko, the working group elected Mr. Louis Joinet as Chairman-Rapporteur for its 1995 session.

5. The following members of the Sub-Commission not members of the working group also took part in the discussion: Mr. Osman El-Hajjé (1st meeting); Mr. El-Hadji Guissé (1st and 2nd meetings).

6. At the invitation of the working group, Mr. Theo van Boven, former Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights, also participated in the discussion on the agenda item relating to basic principles and guarantees concerning the right to restitution and compensation.

7. Statements were made by representatives of the following non-governmental organizations in consultative status with the Economic and Social Council: Amnesty International (1st meeting), International Commission of Jurists (1st meeting), Latin American Federation of Associations of Relatives of Disappeared Detainees (1st meeting), International Association against Torture (2nd meeting).

8. The working group had before it the following documents relating to its provisional agenda:

> Reports of the Secretary-General prepared pursuant to Sub-Commission resolutions 1993/29 and 1994/33 (E/CN.4/Sub.2/1994/7 and Add.1, and E/CN.4/Sub.2/1995/17 and Add.1 and 2);
>
> Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report submitted by Mr. Theo van Boven, Special Rapporteur (E/CN.4/Sub.2/1993/8);
>
> Report of the Secretary-General on capital punishment and implementation of safeguards guaranteeing the protection of the rights of those facing the death penalty (E/1995/78 and Add.1 and Corr.1);

Report of the Secretary-General on the expert group meeting on children and juveniles in detention: application of human rights standards (E/CN.4/1995/100);

Note by the Secretary-General on the situation of children deprived of their liberty (E/CN.4/Sub.2/1995/30 and Add.1);

Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36);

Report of the meeting of experts on rights not subject to derogation during states of emergency and exceptional circumstances (E/CN.4/Sub.2/1995/20, annex I);

Report of the Working Group on Detention on its 1994 session (E/CN.4/Sub.2/1994/22);

Working paper prepared by Mr. Louis Joinet on follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance (E/CN.4/Sub.2/1995/WG.1/CRP.1);

Note by the Secretariat concerning the handling of capital punishment communications by United Nations human rights treaty bodies (E/CN.4/Sub.2/1995/WG.1/CRP.2).

Adoption of the agenda

9. At its 1st meeting, the working group considered the provisional agenda contained in paragraph 56 of document E/CN.4/Sub.2/1994/22. At the suggestion of the Chairman, based on informal consultations with other members of the working group, the working group decided to adopt and consider the following agenda:

1. Basic principles and guidelines concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms:

   (a) General principles;

   (b) Forms of reparation;

   (c) Procedures and mechanisms.

2. Follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance.

3. Habeas corpus as a non-derogable right and as one of the requirements for the right to a fair trail.

4. Issues related to the deprivation of the right to life, with special reference to:

(a) Imposition of the death penalty on persons of less than 18 years of age and on the mentally and physically disabled;

(b) Questions relating to summary, arbitrary and extrajudicial executions.

5. Juvenile justice

6. Matters arising from the 1994 report of the working group.

7. Provisional agenda for the next session.

8. Adoption of the report of the working group to the Sub-Commission.

I. BASIC PRINCIPLES AND GUIDELINES CONCERNING THE RIGHT TO RESTITUTION, COMPENSATION AND REHABILITATION FOR VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: (a) GENERAL PRINCIPLES; (b) FORMS OF REPARATION; (c) PROCEDURES AND MECHANISMS

10. In response to the decision made by the Sub-Commission in paragraph 1 of its resolution 1994/33 to continue the consideration of the proposed basic principles and guidelines at its forty-seventh session with a view to making substantial progress in the matter, the working group discussed the principles and guidelines proposed by the former Special Rapporteur, Mr. Theo van Boven, in his study on the subject (E/CN.4/Sub.2/1993/8, chap. IX).

11. In his opening statement, the representative of the Centre for Human Rights, said that at its previous session the working group had taken a further step forward by considering the basic principles and guidelines concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. The proposed principles were submitted for consideration at the current session by their author, Mr. Theo van Boven.

12. Mr. van Boven said that at its previous session, in 1994, the working group had considered the first seven general principles of the proposed basic principles and guidelines. In his view, substantive progress had been made during that preliminary consideration of the proposed basic principles and guidelines. He proposed that consideration of them be continued, starting with the first reading of articles 8 to 11 concerning the forms of reparation. He drew the attention of the group to comments received from States and intergovernmental and non-governmental organizations contained in relevant reports of the Secretary-General (E/CN.4/Sub.2/1994/7 and Add.1 and E/CN.4/Sub.2/1995/17 and Add.1 and 2).

13. Mr. van Boven also pointed out that the concept of "reparation" was general in nature and included the following terms: "restitution", "compensation", "rehabilitation", "satisfaction" and "guarantees of

non-repetition". Concerning the notion of "restitution" embodied in draft article 8, he stated that in many cases restitution was not feasible, and it was therefore necessary to resort to other forms of reparation such as compensation, which should be provided for any economically assessable damage resulting from human rights violations. Another important form of reparation was rehabilitation, which, in accordance with draft article 10, should include legal, medical, psychological and other care and services. He emphasized that reparation should also cover such important forms as satisfaction and guarantees of non-repetition. They should ensure that human rights violations should not occur again.

14. In his view, issues relating to reparation should not be understood exclusively in financial terms, which represented only one form of reparation. As had emerged during his meetings with victims of violations of human rights, the victims were particularly interested in restoration of their rights and dignity, in acknowledgment that violations had been committed and in revelation of the truth. It also should be acknowledged that financial means were often not available to provide compensation.

15. Ms. Forero Ucros commented that many elements contained in the basic principles and guidelines had been accepted by the Inter-American Court of Human Rights, the voluntary jurisdiction of which has been accepted by 13 or 14 States. The Inter-American Court of Human Rights had made decisions on reparation based on such elements as physical or mental harm and lost opportunities in cases of enforced disappearance. The Inter-American Commission on Human Rights has also supported those principles. Within the framework of the American Convention on Human Rights, Colombia, like some other States, had created a national commission to investigate human rights violations, in particular with respect to enforced and involuntary disappearances. In the case of events that had taken place in the town of Trujillo, compensation for the victims had been recommended. She said that it was important to point out that the draft principles, and in particular, draft principle 9 had been accepted by the Inter-American Court of and Commission on Human Rights and that some States parties to the American Convention on Human Rights had used them innovatively to pay compensation to victims or their families without procedural delay, taking into account recommendations made by competent intergovernmental organizations. In her view, the link between national courts and mechanisms for reparation and international courts should be considered. An international mechanism should be invoked only when the domestic remedies had been exhausted.

16. On the subject of the proposed article 8, Mr. Guissé was in favour of introducing the concepts of rehabilitation (preferable to that of restitution, applicable to physical property) and rectification (applicable in the event of violations in writing such a libel by the print media). With regard to proposed article 10, he considered that the term "réhabilitation" was more appropriate in French-language legislation than "réadaptation". He supported the proposal of the Latin American Federation of Associations of Relatives of Disappeared Detainees to replace the term "reparation" by "compensation".

17. He said that it was necessary to ensure individual reparation for any victim of a violation of the right to liberty. In order to ensure genuine reparation, he suggested extending the right to reparation to the

beneficiaries - children and forebears - of the immediate victim. He also stressed the need to disseminate national and international standards concerning reparation among the general public, individuals, victims and their legal counsel through State information and educational measures. In matters of justice, victims were entitled to a case-by-case assessment.

18. Mr. Chernichenko stated that since the term "emotional distress" had a wide and vague meaning, it could not be directly linked to violations of human rights and therefore it could be deleted from draft article 9. He also proposed replacing the word "reprisals" by the word "persecutions".

19. Ms. Gwanmesia was of the opinion that the term "emotional distress" should be retained, because a person could suffer emotionally during detention. She referred to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1 of which stated that the term "torture" meant any act by which severe pain or suffering, whether physical or mental, was intentionally inflicted on a person. She considered that even such a measure as solitary confinement, especially when a person was kept incommunicado, could cause emotional distress and loss of reason. Therefore, such a person should be eligible for "reasonable medical and other expenses of rehabilitation" as were rightly provided for in draft article 9 (e). The Government must use medical means to rehabilitate the victim. In her view, victims of human rights violations could be both individuals and groups of persons.

20. Ms. Gwanmesia further stated that remedies should be extended to include rehabilitation in accordance with a court decision. Although different words were used in different international instruments for the classification of remedies, they were all corollaries of the word "remedy". For example, the first Optional Protocol to the International Covenant on Civil and Political Rights permitted the Human Rights Committee to recommend that a State party grant the victim compensation or remedy. Under the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination could make a similar recommendation. The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment stated that all victims should obtain redress and had an enforceable right to fair and adequate compensation, and the Constitution of the International Labour Organization allowed the Commission of Inquiry to deem that "reparations" were appropriate. Therefore, it would be cumbersome to subdivide the remedies beyond the subtitles of compensation, restitution and rehabilitation; if that were done, the subheadings would overlap. For example, in draft article 11, subparagraphs (a) (cessation) and (d) (apology and public acknowledgement) overlapped with subparagraph (f) (commemoration).

21. She pointed out that compensation was usually awarded in money or in kind where the previous status quo could no longer be restored. But where the right could be reinstated, restitution was sufficient. Further, the remedy applied depended on the nature of the violation committed (i.e criminal, civil or administrative). Accordingly, the term "remedy" should be restricted to "compensation, restitution and rehabilitation".

22. On the basis of a suggestion made by Ms. Gwanmesia, the working group recommended that the title of agenda item 10 of the forty-seventh session of the Sub-Commission be amended in English to read "The administration of justice and remedies to victims of human rights violation and fundamental freedoms". It was also recommended that the working group could be entitled "The working group on the administration of justice and remedies for victims of gross violations". The term "remedy" appeared in most international, regional and national instruments, which required the victim to be compensated.

23. Mr. Joinet said that, in view of the important sematic issues raised by the legal terms used in the section "Forms of reparations", those terms should be re-examined in the various United Nations languages. With respect to draft article 9, he suggested that (a) and (b) should be merged so that (a) would read: "Physical, psychological or mental harm". Pain and suffering were in fact included in the concept of mental harm, whereas emotional stress was closer to psychological harm.

24. Regarding draft article 11, he considered that the term "satisfaction" and the expression "guarantees of non-repetition" covered different aspects. He was also in favour of a specific provision on rehabilitation encompassing inter alia the points concerning commemorations, acceptance of responsibility and apology. He stressed how important it was for victims for there to be commemorations, as had been held in Chile, and apologies, like the recent acknowledgement by the President of the French Republic of the responsibility of the French State in the persecution of the Jewish community with a view to its extermination during the Second World War.

25. Regarding Mr. Guissé's comment on individual reparation, he pointed out that a person who, after criminal proceedings, was found to be not guilty could not be considered to be entitled to reparation for human rights violations if all the safeguards guaranteeing the right to a fair trial had been respected.

26. Mr. Zhong Shukong expressed the opinion that the scope of "reparations" found in draft articles 2 to 5 of the principles was far too wide and that the reparation dealt with in draft article 8 should be provided in accordance with the law of the State concerned. In addition, State responsibility should be considered in a different light from the deliberations of the International Law Commission and, in particular, from its draft articles on State responsibility for "internationally wrongful acts". The issue of impunity of perpetrators of violations of human rights should be included in the principles.

27. Mr. Zhong was also of the opinion that the purpose of the principles was to remove, to the extent possible, the causes of human rights violations and redress such violations. The principles, concepts and terms should be consistent with existing international instruments. He suggested that draft articles 9 and 11 should be more general, because it was not possible to list exhaustively all violations, satisfactions and guarantees of non-repetition. He also proposed that the proposed basic principles and guidelines as revised by Mr. van Boven should be sent to Member States for comments and urged

Governments to cooperate in that respect in order to enable the Sub-Commission to benefit from their inputs at its next session. The working group recommended that the Sub-Commission should take action on that matter.

28. The representative of the Latin American Federation of Associations of Relatives of Disappeared Detainees commented that reparation was not the same as financial compensation, which was only one aspect of reparation. Other important forms were rehabilitation and restitution. It was pointed out that in the proposed draft there was no reference to the fact that the forms of reparation provided for in articles 8 to 11 were often supplementary or complementary and the application of one form of reparation did not exclude the application of others.

29. The representative of the International Commission of Jurists, referring to Ms. Ferrero Ucros' statement, proposed that the relevant aspects of the Inter-American system should be borne in mind in the further elaboration and revision of the proposed basic principles. Concerning different forms of reparation, he pointed out as an example that in the case of reparations in Aloeboetoe versus Suriname, the State had admitted killings in a village. The Inter-American Court had decided in that case that a medical clinic and a school should be opened by the State for the community where the killings took place.

30. Summing up the debate, Mr. van Boven considered that the most efficient way to proceed would be to put aside for later consideration the question of the title of the basic principles and guidelines. He expressed, however, a strong preference for using the expression "the right to reparation" in the title, because that expression reflected most comprehensively and adequately the full scope of the subject-matter. He also felt that the headings of articles 8 to 11 should be retained, despite the fact that the list of all forms of reparation was not exhaustive. Those forms should be considered as interrelated and complementary. He agreed as to the usefulness of the Inter-American system in the field and gave examples of how he had described it in his study. He would continue to make use of the relevant Inter-American case-law while revising his draft. He would also review the terminology and its proper place in the draft in the light of the discussion which had taken place in the group. In particular, he would consider the use of the term "rehabilitation" in the sense of "restoration of rights" as Mr. Guissé and Mr. Joinet had proposed. He would consider the question of combining some subparagraphs of draft article 9. He would also see whether it was possible to consolidate some elements of draft article 11 on "satisfaction and guarantees of non-repetition".

31. As to the question of responsibility, Mr. van Boven said that he had based his study mainly on the concept of State responsibility. Nevertheless, it might be possible to emphasize individual responsibility, especially in terms of punitive damages, which might require further study. However, there were possibilities and ways of bringing an individual to justice on the basis of his or her criminal responsibility as was envisaged in the establishment of the International Tribunal on the Former Yugoslavia by the Security Council in its resolution 827 (1993). He therefore agreed that the issue of individual responsibility required further consideration.

32. Referring to a number of remarks relating to his study, Mr. van Boven stated that he was unable to revise his study unless the Sub-Commission requested him to do so. However, he would take those remarks into consideration, as well as suggestions and recommendations concerning the proposed basic principles and guidelines when he revised them. He supported the idea of sending the revised proposed basic principles and guidelines to Member States for their comments.

33. Supporting Mr. Joinet's proposal, the working group recommended that the Sub-Commission should request Mr. van Boven to prepare a revised version of the proposed basic principles and guidelines and to submit it before the next session of the Sub-Commission.

II. FOLLOW-UP MEASURES TO THE DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

34. Mr. Joinet introduced his working paper, prepared at the request of the working group at its previous session (E/CN.4/Sub.2/1995/WG.1/CRP.1), on follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance, drawing attention to the interest shown in the subject by the various United Nations forums. He referred in particular to the Vienna Declaration and Programme of Action and to the work of the Working Group on Enforced or Involuntary Disappearances, which had noted that "in the time that has elapsed since the Declaration was adopted the application of its main provisions has run into serious difficulties in most of the States concerned". In addition, the General Assembly and the Commission on Human Rights had invited all Governments to take appropriate legislative and other measures to prevent and punish the practice of enforced disappearance. He further stressed the importance of follow-up to the Declaration and of the recent adoption of the Inter-American Convention on Forced Disappearance of Persons.

35. Mr. Joinet proposed that the working group, at its next session, should:

Keep him informed, firstly, of the status report prepared by the Working Group on Enforced or Involuntary Disappearances concerning the measures taken by Governments to give effect to the Declaration and, secondly, on the basis of paragraph 10 of General Assembly resolution 49/193 of 23 December 1994, of the action taken by non-governmental organizations to encourage the implementation of the Declaration, facilitate its dissemination and contribute to the work of the Sub-Commission in that field;

Submit at the next session a preliminary draft "international convention on the prevention and punishment of enforced disappearances"; a meeting of experts to prepare a working paper on the subject should be organized to that effect, under the auspices of the Centre for Human Rights, in accordance with paragraph 10 of General Assembly resolution 49/193.

36. The representative of Amnesty International indicated that there was a clear belief in the international community that protection against enforced disappearances would be guaranteed if a convention were elaborated. In that connection it was pointed out that in its latest report (E/CN.4/1995/36),

the Working Group on Enforced or Involuntary Disappearances had urged Member States to implement the Declaration on the Protection of All Persons from Enforced Disappearance and had suggested that effective machinery be developed for its implementation. A convention would assist in achieving that goal.

37. The representatives of the International Commission of Jurists and the Latin American Federation of Associations of Relatives of Disappeared Detainees supported the initiative put forward by Mr. Joinet and suggested that the working group recommend that the Sub-Commission draft a convention against enforced disappearance.

III. HABEAS CORPUS AS A NON-DEROGABLE RIGHT AND AS ONE OF THE REQUIREMENTS FOR THE RIGHT TO A FAIR TRIAL

38. The representative of the Centre for Human Rights drew the working group's attention to the report of the meeting of experts on rights not subject to derogation during states of emergency and exceptional circumstances (E/CN.4/Sub.2/1995/20, annex I), held in Geneva from 17 to 19 May 1995 under the auspices of the Centre for Human Rights. The meeting addressed the question of the advisability of expanding the list of non-derogable rights as reflected in the report.

39. On a proposal by Mr. Joinet, the working group decided to request Mr. Despouy, Special Rapporteur on human rights and states of emergency, to prepare a working paper on the subject so that the working group could examine it in depth at its next session.

IV. ISSUES RELATED TO THE DEPRIVATION OF THE RIGHT TO LIFE, WITH SPECIAL REFERENCE TO: (a) IMPOSITION OF THE DEATH PENALTY ON PERSONS OF LESS THAN 18 YEARS OF AGE AND ON THE MENTALLY AND PHYSICALLY DISABLED; (b) QUESTIONS RELATING TO SUMMARY, ARBITRARY AND EXTRAJUDICIAL EXECUTIONS

40. The representative of the Centre for Human Rights drew the working group's attention to the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/1995/78 and Add.1). He also informed the group that, under agenda item 4 and at the request of the working group, the Secretariat had prepared a document (E/CN.4/Sub.2/1995/WG.1/CRP.2) on the handling of capital punishment communications by United Nations human rights treaty bodies.

41. Under sub-item (a), Mr. Guissé noted that there was an increasing number of States that could be described as "de facto abolitionists" but that at the same time other States were reintroducing the death penalty or expanding its scope of application, in particular to cover political offences. In that connection, 1995 had seen the largest number of executions. That situation should prompt the working group to request States to keep it more fully informed, to respect the safeguards guaranteeing the protection of the rights of persons facing the death penalty and to apply alternative sentences.

He announced his willingness to approach Amnesty International with a view to preparing a single, comprehensive document every year reviewing States' position on the death penalty.

42. On the subject of sub-item (b), he deplored the recourse to summary, arbitrary and extrajudicial executions, especially by States with abolitionist legislation, and concluded that it was necessary to combat all violations of the right to life, not only de jure but also de facto.

43. The working group recommended that that item should remain on the provisional agenda of the following session. Special attention should also be given to the question of the imposition of the death penalty on minors and on the mentally and physically disabled. The work of the human rights bodies, including the Human Rights Committee and the Committee against Torture, should be examined more closely in that regard. The members of the working group invited Mr. Guissé to draft a paper on the deprivation of the right to life.

V. JUVENILE JUSTICE

44. The representative of the Centre for Human Rights drew the working group's attention to the report of the expert group meeting on children and juveniles in detention: application of human rights standards (E/CN.4/1995/100), held in Vienna from 30 October to 4 November 1994. In its resolution 1995/41, the Commission on Human Rights, at its fifty-first session, took note with appreciation of the experts' recommendations and invited Governments to provide training in human rights and juvenile justice to all judges, lawyers, prosecutors, social workers and other professionals concerned with juvenile justice, including police and immigration officers. A note by the Secretary-General on the situation of children deprived of their liberty (E/CN.4/Sub.2/1995/30 and Add.1) was also submitted to the working group for consultation.

45. Mr. Guissé pointed out that the concept of juvenile justice concerned not only judicial bodies but also social workers, police departments such as juvenile units and services responsible for the execution of punishment whose object should be to protect and rehabilitate juveniles. He stressed the crucial importance of adopting measures to ensure that juvenile delinquents did not turn to serious crime. He also wished to see the question of young migrant workers deprived of their liberty duly taken into account.

46. Ms. Gwanmesia, emphasized the importance of juvenile justice in particular, because of the frailness of minors, and stated that the subject should not be ignored. If minors are detained with adults and tried by courts of first instance, then all efforts to ensure that minors are not traumatized will be lost. This item should be given profound consideration; a study which would contain recommendations could be undertaken on the question of juvenile justice system.

47. In response to that suggestion, Mr. Joinet, pointing out that a large number of initiatives had already been taken by the Sub-Commission in the field of juvenile justice, recalled the report on the application of international standards concerning the human rights of detained juveniles prepared by Mrs. M. Concepción Bautista. He also referred to the report of

the expert group meeting on children and juveniles in detention: application of human rights standards (E/CN.4/1995/100), held in Vienna from 30 October to 4 November 1994. He further stressed that several United Nations bodies, including the Commission on Human Rights, the Sub-Commission and the Committee on the Rights of the Child, had expressed their serious concern about the situation of children deprived of their liberty.

48. While appreciating the interest rightly shown in the subject by some members of the working group, Mr. Joinet was of the opinion that, given the numerous initiatives taken in that area by the Sub-Commission as reported by the Secretariat, the Sub-Commission had amply fulfilled its mandate and that that item could consequently be removed from the agenda to make way for a new item.

49. In order to ensure that an informed decision could be taken on the matter, Mr. Joinet requested the Secretariat to prepare an information note for the following year, recapitulating the reports, studies and other documents submitted by United Nations bodies since Mrs. Concepción Bautista's final report.

VI. MATTERS ARISING FROM THE 1994 REPORT OF THE WORKING GROUP

50. The working group decided to amend the wording of the agenda item as follows: "Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide" and to consider it at its next session.

VII. PROVISIONAL AGENDA FOR THE NEXT SESSION

51. At its 2nd meeting, the working group adopted the following provisional agenda for its next session:

1. Election of officers.

2. Adoption of the agenda.

3. Follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance.

4. Habeas corpus as a non-derogable right [and as one of the requirements for the right to a fair trial].

5. Guiding principles concerning the right to reparation for victims of gross violations of human rights and fundamental freedoms:

   (a) General principles;

   (b) Forms of reparation;

   (c) Procedures and mechanisms.

6. Issues related to the deprivation of the right to life, with special reference to:

(a) Imposition of the death penalty on persons of less than 18 years of age and on the mentally and physically disabled;

(b) Summary, arbitrary and extrajudicial executions.

7. Advisability of maintaining the item on juvenile justice.

8. Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide.

9. Provisional agenda for the next session.

10. Adoption of the report of the working group to the Sub-Commission.

VIII. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

52. At its 3rd meeting on 10 August 1995, the working group unanimously adopted the present report to the Sub-Commission.